



STATE OF MICHIGAN
OFFICE OF THE CHIEF COMPLIANCE OFFICER
LANSING

GRETCHEN WHITMER
GOVERNOR

KEVIN FRAN CART, ESQ.
CHIEF COMPLIANCE OFFICER

MEMORANDUM

September 8, 2020

TO: The Honorable Gretchen Whitmer
Governor

The Honorable Senator Jim Stamas
Senate Appropriations Committee Chair

The Honorable Shane Hernandez
House Appropriations Committee Chair

The Honorable Steve Marino
House Commerce and Tourism Committee Chair

Margaret O'Brien
Secretary of the Senate

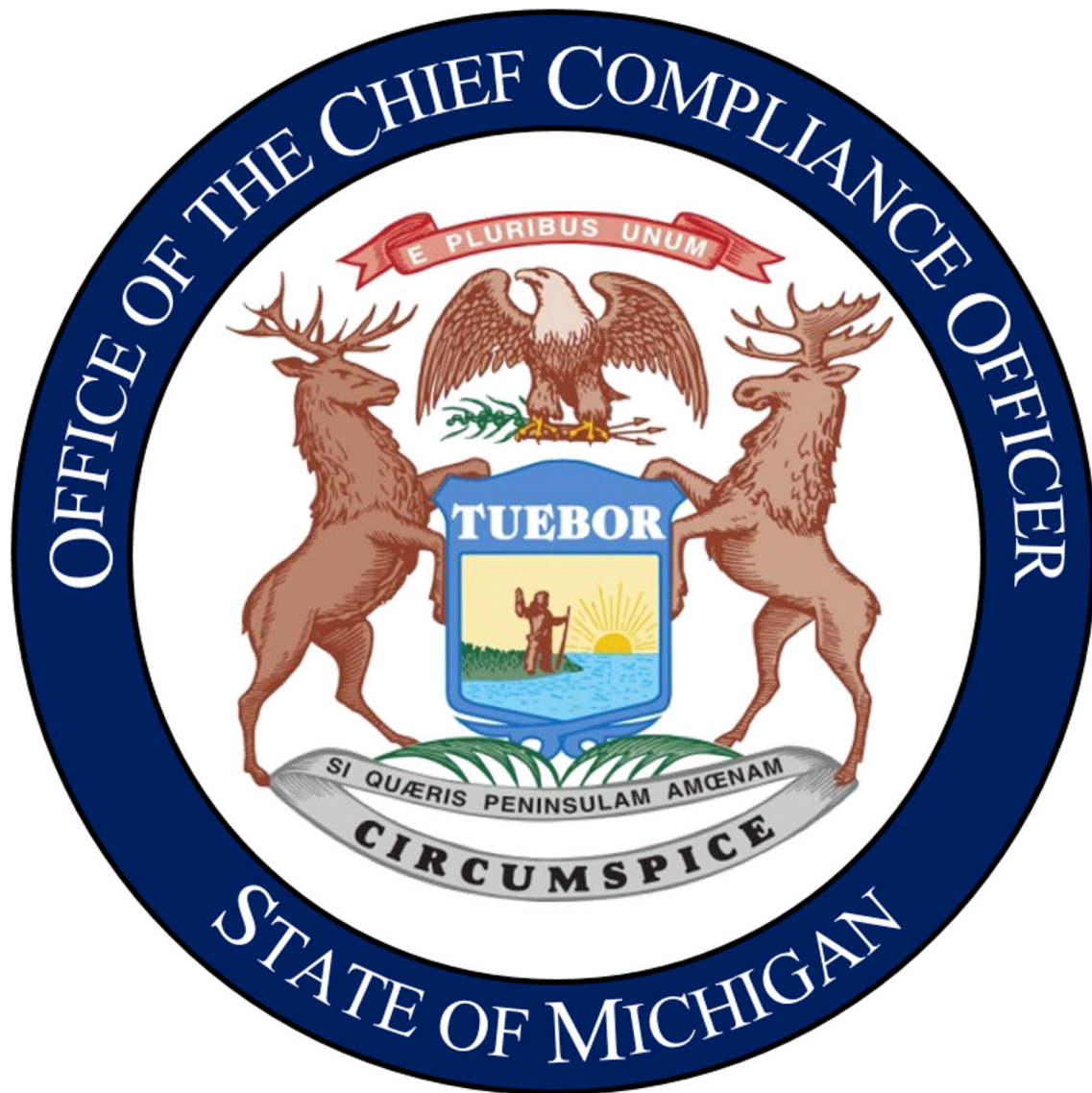
Gary Randall, Clerk
House of Representatives

FROM: Kevin Francart
Chief Compliance Officer
Office of the Chief Compliance Officer

RE: Annual Report of the Office of the Chief Compliance Officer – Fiscal Year 2019

Attached is the Annual Report of the Office of the Chief Compliance Officer for fiscal year 2019, which relates to 21st Century Jobs Trust Fund programs and activities. This report is required by MCL 125.2088i(6)(i), which requires the Chief Compliance Officer to prepare a written annual report that evaluates MSF Board members, employees, and agents compliance with internal policies and procedures and with applicable state and federal law, explains any compliance matters that arose during the previous year, and suggests revisions to agency policies and procedures.

ANNUAL REPORT OF THE
OFFICE OF THE CHIEF COMPLIANCE OFFICER



FISCAL YEAR 2019

OCTOBER 1, 2018 – SEPTEMBER 31, 2019

INTRODUCTION:

The primary function of the Office of the Chief Compliance Officer is to protect the State's assets consistent with the requirements of the Michigan Strategic Fund Act by assisting the Michigan Strategic Fund board with the creation, implementation, monitoring, and enforcement of policies and procedures to prevent or detect illegal, unethical, or improper conduct of Michigan Strategic Fund Board members, or employees and agents of the Michigan Strategic Fund Board, and correct such violations promptly.

ORGANIZATIONAL STRUCTURE

The Office of the Chief Compliance Officer (OCCO) was created as an autonomous entity within the Michigan Strategic Fund (MSF) by 2005 Public Act 225, MCL 125.2088i, on November 21, 2005. The Chief Compliance Officer (CCO) is the executive head of the OCCO but is appointed by and reports directly to the State Administrative Board.¹ The CCO is independent from, and does not fall under the authority of, the Department of Labor and Economic Opportunity², the MSF, or the Michigan Economic Development Corporation (MEDC).

CHIEF COMPLIANCE OFFICER

Kevin Francart was initially appointed as the CCO on November 10, 2013. Prior to being appointed as the Chief Compliance Officer, Mr. Francart served as the Deputy Director and General Counsel of the State of Michigan Land Bank Fast Track Authority, and as an Assistant Attorney General with the Michigan Department of Attorney General. Mr. Francart graduated cum laude from Thomas M. Colley Law School in 2001. Mr. Francart is a Certified Fraud Examiner and a Certified Compliance and Ethics Professional.

RESPONSIBILITIES

The CCO has the responsibilities set forth in the Michigan Strategic Fund Act. In particular, the Chief Compliance Officer:

- Assists the MSF Board with the creation, implementation, monitoring, and enforcement of policies and procedures to prevent, detect, and correct, illegal, unethical, or improper conduct on the part of its Board members, employees, or agents in carrying out their duties under the Act
- Assists employees and agents of the MSF Board to ensure that they are in compliance with internal policies and procedures and with applicable state and federal law.
- Makes recommendations to the MSF Board and employees of the MSF Board regarding the appropriate evaluation, investigation, and resolution of issues and concerns regarding

¹The State Administrative Board has general supervisory control over the administrative activities of all State departments and agencies. The State Administrative Board members are the Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, Superintendent of Public Instruction, and the Director of the Department of Transportation.

² Executive Order 2019-13 changed the name of the department from the 'Department of Talent and Economic Development' to the 'Department of Labor and Economic Opportunity' effective August 11, 2019.

compliance with internal policies and procedures and with applicable state and federal law.

- Assists in the establishment of policies and procedures to ensure that money expended for grants, loans, or other economic assistance under sections 88d, 88e, 88f, 88g, 88k, 88q, and 88r and chapter 8C is not used for: the provision of money to a person who has been convicted of a criminal offense incident to the application for or performance of a State contract or subcontract; or the provision of money to a person who has been convicted of a criminal offense, or held liable in a civil proceeding, that negatively reflects on the person's business integrity, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, violation of state or federal antitrust statutes, or for any additional findings as determined by the fund board, pursuant to MCL 125.2088c.
- Reports quarterly to the MSF Board and the State Administrative Board regarding compliance with internal policies and procedures and with applicable state and federal law.
- Prepares a written annual report to the Governor and Legislature that evaluates compliance with internal policies and procedures and with applicable state and federal law, explains any compliance matters that arose during the previous year, and suggests revisions to agency policies and procedures.
- Contacts persons receiving awards, investments, grants, and loans under the Act, to the extent necessary to carry out responsibilities under Chapter 8A, MCL 125.2088 – MCL 125.2088r.
- Determines if a person appointed or designated to certain review committees reviewing proposals and applications have a conflict of interest with any potential respondents or applicants.
- Review and evaluate compliance with the site visit guidelines required under MCL 125.2009(14).
- Approves certain transactions under the Michigan film and digital media investment loan program pursuant to MCL 125.2088d.

REPORTS

The CCO reports quarterly to the MSF Board and the State Administrative Board regarding compliance with internal policies and procedures and with applicable state and federal law. The CCO reports annually to the Governor and Legislature evaluating compliance with internal policies and procedures and with applicable state and federal law, explaining any compliance matters that arose during the previous year, and suggests revisions to agency policies and procedures.

ANNUAL REPORT:

The CCO has certain responsibilities established by statute, which primarily consist of assisting the MSF board with the creation, implementation, monitoring, and enforcement of policies and procedures to prevent or detect illegal, unethical, or improper conduct of MSF board members, employees, or agents of the MSF fund board, and correcting such violations promptly. This includes making recommendations to the MSF Board, and employees of the MSF Board,

regarding the appropriate evaluation, investigation, and resolution of issues and concerns regarding compliance with internal policies and procedures and with applicable state and federal law. In carrying out those responsibilities, the CCO works closely with staff of the MEDC and the Michigan Department of Attorney General (AG). The approach is to be proactive and through close collaboration detect and prevent compliance issues before they rise to a level requiring formal remedial measures.

EVALUATION OF COMPLIANCE WITH INTERNAL POLICIES AND PROCEDURES AND WITH APPLICABLE STATE AND FEDERAL LAW; EXPLANATION OF ANY COMPLIANCE MATTERS THAT AROSE DURING THE PREVIOUS YEAR

The policies and procedures employed by the MSF Board and the MEDC, and monitored by the CCO, worked well during the past fiscal year. The MSF Board as well as Senior Leadership are conscientiousness about complying with applicable state and federal laws as well as internal policies and procedures.

MSF Board members are required to disclose any Conflicts of Interest related to any matter before the MSF Board before the MSF Board takes any action with respect to the matter. MSF Board members continue to be diligent in monitoring possible Conflicts of Interest and seeking advice as necessary and recusing themselves when a conflict has been determined.

The MSF is required to ensure that money expended under various sections of the Michigan Strategic Fund Act is not provided to either an applicant who has been convicted of a criminal offense incident to a state contract or subcontract; or an applicant who has been convicted of a criminal offense, or held liable in a civil proceeding, that negatively reflects on the applicant's business integrity. To comply with this requirement the MSF has a background check policy in place to determine if an applicant has been convicted of a criminal offense, or held liable in a civil proceeding, that negatively reflects on the applicant's business integrity. Additionally, an applicant who receive funds is required to affirm or warrant in the agreement that it has not been convicted of or held liable for a prohibited offence. The MSF Board Background Check policy requires that all final written agreements memorializing an incentive from the MSF include language requiring the applicant to represent and warrant that, to the best of its knowledge, the applicant, including its affiliates, subsidiaries, officers, directors, managerial employees, and any person who, directly or indirectly, holds a pecuniary interest in the Applicant of 20% or more, do not have criminal convictions or civil liabilities as described in Sections 125.2088c(4)(a) and 125.2088c(4)(b) and will not use the funds for the prohibited purposes described in Sections 125.2088c(4)(c)-(e). Additionally, the MSF Board Background Check policy requires a civil and criminal background check for any applicant seeking an MSF incentive of \$15,001 or more. If the applicant, or the Applicant's direct parent company, is a publicly traded domestic or foreign issuer and has filed all of its required SEC filings, then a review of the publicly traded issuer's public filings for the previous eight fiscal years may be conducted to satisfy the requirements of the Background Check policy. If the applicant is not a publicly traded issuer then the CEO, CFO, and COO, or any individual or business entity that, directly or indirectly, holds a pecuniary interest of 20% or more in the applicant is subject to a civil and criminal background check. If the applicant is a non-profit organization, municipality or an institution of higher education, the

MSF President and MSF Fund Manager, together, can limit the civil and criminal background check to the individual who is responsible for managing the MSF incentive for the applicant.

The MSF Board delegates some of its authority to the Fund Manager, the MSF President, and occasionally to the State Treasurer acting in concert with the Fund Manager or MSF President for the effective operations of programs and activities it has authorized. To better monitor the delegated authority and allow for a more transparent use of delegated authority The MSF Board included a requirement for a compilation of all general delegated authority into an official compilation in its amended and restated bylaws. The official compilation of general delegated authority is maintained and published.

Most compliance issues were avoided or successfully resolved informally because of the proactive approach and close collaboration between the MSF and MEDC legal and compliance staff, the AG, and the CCO. The CCO provided informal advice regarding various issues arising this fiscal year concerning such topics as the breadth of delegated Board authority, conflict of interest issues, background check requirements, authorized use of 21st century job fund funds, and compliance with established MSF Board policy and limitations.

The CCO assisted MSF Board Members with conflict of interest analyses including: a conflict of interest issue due to membership on a recipient's Board of Directors, in which case appropriate notice and screening were in place; and, a conflict of interest question regarding past business relationships, in which no conflict was found. The CCO also assisted the MSF with a conflict of interest issue regarding a recipient's board members serving as members of the Joint Evaluation Committee (JEC) recommending the awards. After reviewing this issue, along with the AG, we concluded that it did not appear that either the recommendations or awards were affected by this conflict and unless the Board wanted to revisit the awards we did not require staff to bring it back before the Board. This office and the AG will work with the MSF and MEDC to ensure that this type of conflict does not happen in the future.

The CCO assisted the MSF with the following policies and guidelines: amending the MSF Background check policy; amending the Michigan Business Development Program (MBDP) guidelines; establishing Micro-MBDP guidelines; establishing Jobs Ready Michigan program guidelines; amending the Community Revitalization Program (CRP) guidelines; and, amending the MSF FOIA policy.

The CCO assisted the MSF with determining its duties to comply with Executive Directives issued by the Governor and its authority to voluntarily comply. The CCO assisted the MSF with an issues regarding delegated authority to award CRP incentives exceeding 25% of eligible investments now allowed under MCL 125.2090b(6). The CCO assisted the MSF with questions regarding the counting the same job as both a Qualified New Job and a Certified New Job in separate programs. The CCO assisted MSF and MEDC staff in ensuring the economic incentives for Fiat Chrysler Automobiles were authorized by statute and Board policy. The CCO assisted the MSF with clarification regarding Background check policy requirements. The CCO assisted MSF and MEDC staff with questions regarding the Willow Run Arsenal of Democracy Landholdings Limited Partnership transfer of property ownership and wrapping up of the LP.

As reported in previous Annual Reports, the MSF act was amended to, among other things, add requirements for site visit guidelines. Site visit guidelines were drafted or updated for the following programs: 21st Century Jobs Fund Loan and Investment Portfolio; Brownfield Tax Credit program; Michigan Business Development Program; Michigan Community Revitalization Program; Michigan Economic Growth Authority Tax Credits program; and, Renaissance Zone Program. Because of the staffing changes and budget concerns the site visit guidelines were changed to no longer require a minimum number of site visits. However, site visits are being performed pursuant to the site visit guidelines.

Governor Whitmer issued Executive Order 2019-13 (EO 2019-13; ERO 2019-3; MCL 125.1998) that reconstituted the MSF Board, and moved the MSF as an autonomous agency from the Department of Talent and Economic Development to the Department of Labor and Economic Opportunity effective August 11, 2019. The CCO assisted the AG's office with confirming the proper seating of the new MSF Board.

SUGGESTED REVISIONS TO AGENCY POLICIES AND PROCEDURES.

The OCCO continues to recommend a risk analysis of the various MSF programs be conducted concerning the need for site visits and the number to be performed annually to help safeguard state funds and assets and the site visit guidelines be amended to reflect the risk associated with the programs.

The OCCO continues to recommend that an objective screening and selection mechanism be implemented in the MBDP program by either setting a minimum score on the current scoring mechanism or implementing a different mechanism.

The OCCO will continue to monitor the policies and procedures employed by the Michigan Strategic Fund Board and the Michigan Economic Development Corporation to assure continued compliance with the law by all parties, both for new and existing programs, activities, and investments.

Respectfully submitted,

Kevin Francart
Chief Compliance Officer
Office of the Chief Compliance Officer