



STATE OF MICHIGAN
OFFICE OF THE CHIEF COMPLIANCE OFFICER
LANSING

RICK SNYDER
GOVERNOR

KEVIN FRAN CART, ESQ.
CHIEF COMPLIANCE OFFICER

MEMORANDUM

July 11, 2018

TO: The Honorable Rick Snyder
Governor

The Honorable Dave Hildenbrand
Chairman of the Senate Appropriations Committee

The Honorable Wayne Schmidt
Chairman of the Senate Commerce Committee

The Honorable Laura Cox
Chairwoman of the House Appropriations Committee

The Honorable Eric Leutheuser
Chairman of the House Commerce and Trade Committee

Jeff Cobb
Secretary of the Senate

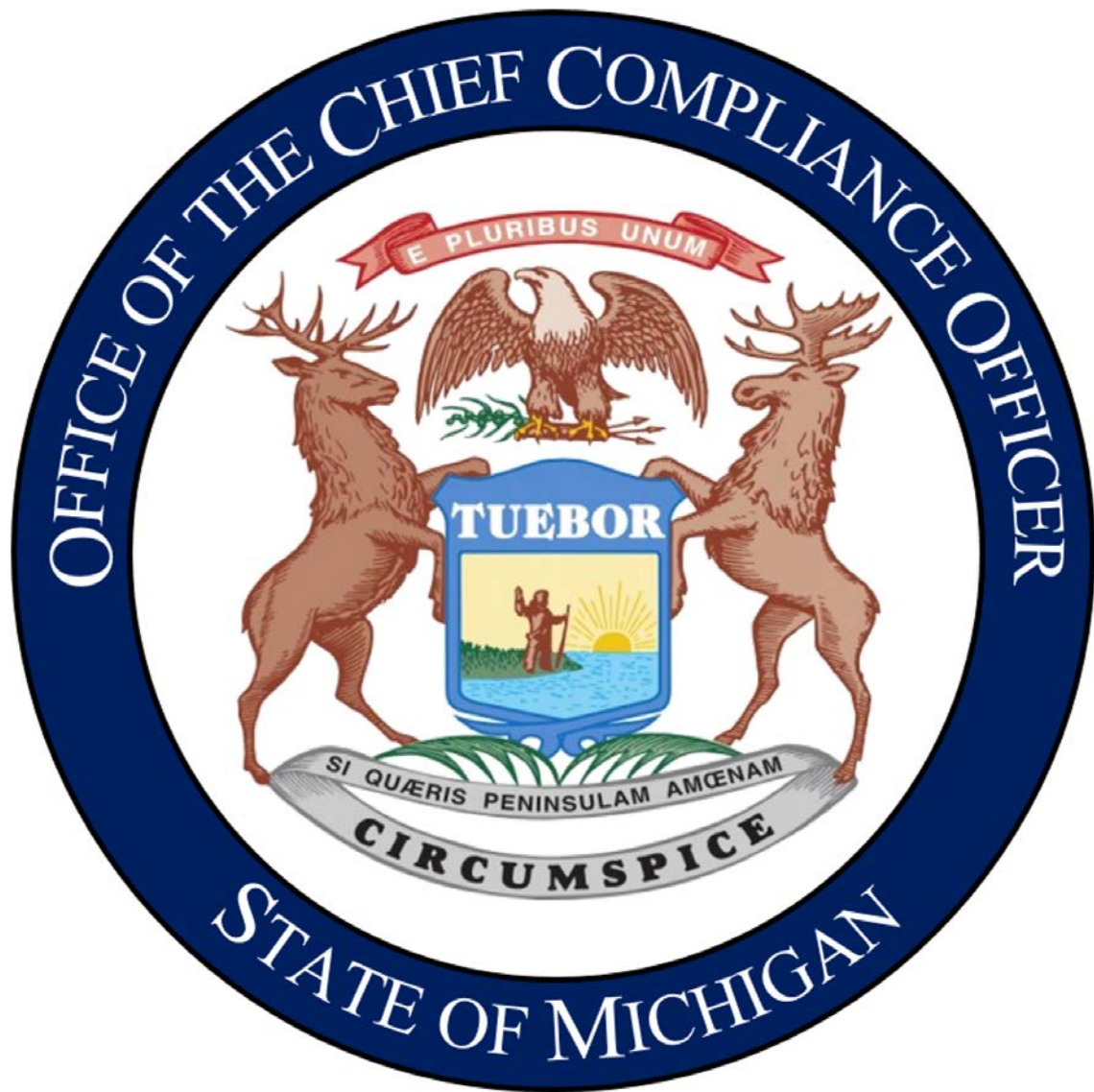
Gary Randall, Clerk
House of Representatives

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 2017

Attached is the Annual Report of the Office of the Chief Compliance Officer for fiscal year 2017, 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 2017

OCTOBER 1, 2016 – SEPTEMBER 31, 2017

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 or 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 the legislature 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 Talent and Economic Development, 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.

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 conscientious 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, applicants who receive funds are 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 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.

A review and evaluation of the Business Development Program's (BDP) decision making process was performed, relevant staff were interviewed and further document review was undertaken. The primary issue found with the BDP decision making process is that while staff use a 20-point score sheet to evaluate whether potential projects move forward, no minimum score is required, thus giving the appearance of an objective process but allowing staff to move any project forward notwithstanding a low score. This concern was discussed with staff, and they were advised to formulate a minimum score that would meet the business needs of the program.

The CCO assisted the MSF with addressing issues regarding the Willow Run Arsenal of Democracy Landholdings Limited Partnership investments. The CCO also assisted the MSF with conflict of interest questions, Board delegation parameters and policy, Brand USA contract questions, and addressing issues regarding background checks and disclosures to the MSF Board.

As reported in the Annual Reports for Fiscal Years 2015 and 2016, 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 from last fiscal year to no longer require a minimum number of site visits. However, site visits are being performed pursuant to the site visit guidelines.

The CCO issued an opinion regarding the MSF's authority to make loans using funds from the jobs for Michigan investment fund established by MCL 125.2088h(1), and the restrictions in MCL 125.2012 requiring significant private sector financial support for economic development projects, as applied to the loan approved by the MSF Board on June 27, 2017, to the City of Trenton.

SUGGESTED REVISIONS TO AGENCY POLICIES AND PROCEDURES.

The OCCO recommends 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 program.

The OCCO recommends that an objective screening mechanism be implemented in the BDP 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