



STATE OF MICHIGAN
OFFICE OF THE CHIEF COMPLIANCE OFFICER
LANSING

GRETCHEN WHITMER
GOVERNOR

KEVIN FRANCCART, ESQ.
CHIEF COMPLIANCE OFFICER

MEMORANDUM

September 30, 2021

TO: The Honorable Gretchen Whitmer
Governor

The Honorable Senator Jim Stamas
Senate Appropriations Committee Chair

The Honorable Thomas Albert
House Appropriations Committee Chair

The Honorable Pauline Wendzel
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 2020

Attached is the Annual Report of the Office of the Chief Compliance Officer for fiscal year 2020, 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 2020

OCTOBER 1, 2019 – SEPTEMBER 31, 2020

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

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.

- 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 MSF 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.

MSF BOARD

The Michigan Strategic Fund Board consisting of:

- Ex Officio Members:
 - The Director of the Department of Labor and Economic Opportunity.
 - The State Treasurer.
 - The Director of the Department of Transportation.
 - The Chief Executive Officer of the MEDC.
- Appointed Members:
 - Seven residents appointed by the governor, subject to advice and consent of the senate.
 - At least six of the seven Appointed Members must be from the private sector. Private sector means the Member is not employed by the MSF or an agency of the State or Federal government.
 - One of the Appointed Members must be nominated by the senate majority leader. The Member appointed must represent individuals within the private sector with experience in private equity or venture capital investments, commercial lending, or commercialization of technology.

- One of the Appointed Members must be nominated by the speaker of the house of representatives. The Member appointed must represent individuals within the private sector with experience in private equity or venture capital investments, commercial lending, or commercialization of technology.

At least two of the Board Members must have experience in private equity or venture capital investments, at least one Member must have experience in commercial lending, and at least one Board Member must have experience in commercialization of technology. The membership of the MSF Board must include minority, small business, and female representation.

The Ex Officio Members may appoint designees to attend MSF Board meetings on their respective behalf.

The MSF Board Members during this fiscal year were:

- Britany L. Affolter-Caine
- Paul Ajegba
- Ronald W. Beebe
- Mark Burton (March 11, 2020 – September 31, 2020)
- Jeff Donofrio
- Rachael Eubanks
- Paul V. Gentilozzi
- September Hargrove
- Jeff Mason (October 1, 2019 – March 3, 2020)
- Charlie P. Rothstein
- Susan Tellier
- Cindy L. Warner

The senate majority leader nominated Member was Ronald W. Beebe.

The speaker of the house of representatives nominated Member was Paul V. Gentilozzi.

The Members appointed representing the Private Sector were:

- Ronald W. Beebe
- Paul V. Gentilozzi
- September Hargrove
- Charlie P. Rothstein
- Susan Tellier
- Cindy L. Warner

The Members appointed having experience in private equity or venture capital investments were:

- Ronald W. Beebe
- Paul V. Gentilozzi
- Charlie P. Rothstein

The Members appointed having experience in commercial lending were:

- Ronald W. Beebe
- September Hargrove

The Members appointed having experience in commercialization of technology were:

- Britany L. Affolter-Caine
- Ronald W. Beebe

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, and employees or agents of the MSF 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 MEDC staff 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 CCO, the MSF and MEDC legal and compliance staff, and the AG. 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 the MSF with amending the Pure Michigan contracts with McCann Erickson and Weber Shandwick to account for the lack of funding in the FY20 budget and Work Project funds for the first quarter of FY20. The CCO assisted staff with drafting amendments to the CRP guidelines and with an issue with an entity requesting an incentive but failing to meet the

background check requirements and the process of declining the request. The CCO assisted the AG with a consent agenda policy for later presentation to the MSF Board and with Rules of Order and Parliamentary Procedure for later presentation to the MSF Board. The CCO assisted the AG and MSF staff with agenda questions and with an issue of conflict of interest concerning employees of the MEDC serving on the boards of organizations being recommended for funding.

The CCO assisted a Board Member with a question regarding the applicability to the MSF of certain Anti-Money laundering requirements that require financial institutions to perform customer due diligence commonly referred to as “Know-Your-Customer.” The CCO opined that the MSF is exempt from those requirements by regulation. (31 CFR 1010.205). The CCO assisted Board Members with a questions regarding the permissibility of a Board Member discussing the Board Member’s vote or position on an item before the Board or other MSF actions and material coming before the MSF with the press, legislators, and members of the public and expressing their opinion on such matters. The Chief Compliance Officer opined that a Board Member may express their opinion and otherwise discuss matters before the MSF Board with others so long as no confidential information obtained as a result of being a Board Member is disclosed.

The CCO assisted the MSF with creating the Michigan Small Business Loan Relief Program, a program to respond to the Covid-19 virus’ impact on small businesses, and with creating an incentive relief initiative and related delegation of authority to respond to the Covid-19 virus’ impact on economic assistance recipients.

The CCO assisted the MSF along with the AG with questions regarding the requirements for a Board Member’s vote to be counted when attending by video conference. The CCO agreed with the AG and opined that in order to be counted the vote must be able to be heard rather than just seen. Additionally, an issue arose that required the individual votes of multiple Board Members be clarified due to issues with the electronic communications and uncertainty on whether the Board Member voted, failed to vote, or meant to abstain.

Because of the staffing changes and budget concerns the site visit guidelines do not require a minimum number of site visits. However, site visits are being performed pursuant to the site visit guidelines.

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 by either setting a minimum score on the current scoring mechanism or implementing a different mechanism.

The OCCO recommends that in order to increase Board Member involvement in setting the policies, goals, and direction of the MSF and economic development in the State that subcommittees be established to allow greater involvement of Board Members in the formulation and creation of MSF policies and procedures.

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