



STATE OF MICHIGAN  
OFFICE OF THE CHIEF COMPLIANCE OFFICER  
LANSING

RICK SNYDER  
GOVERNOR

KEVIN FRANCCART, ESQ.  
CHIEF COMPLIANCE OFFICER

MEMORANDUM

July 29, 2016

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 Al Pscholka  
Chairman of the House Appropriations Committee

The Honorable Joseph Graves  
Chairman of the House Commerce and Trade Committee

Jeff Cobb  
Secretary of the Senate

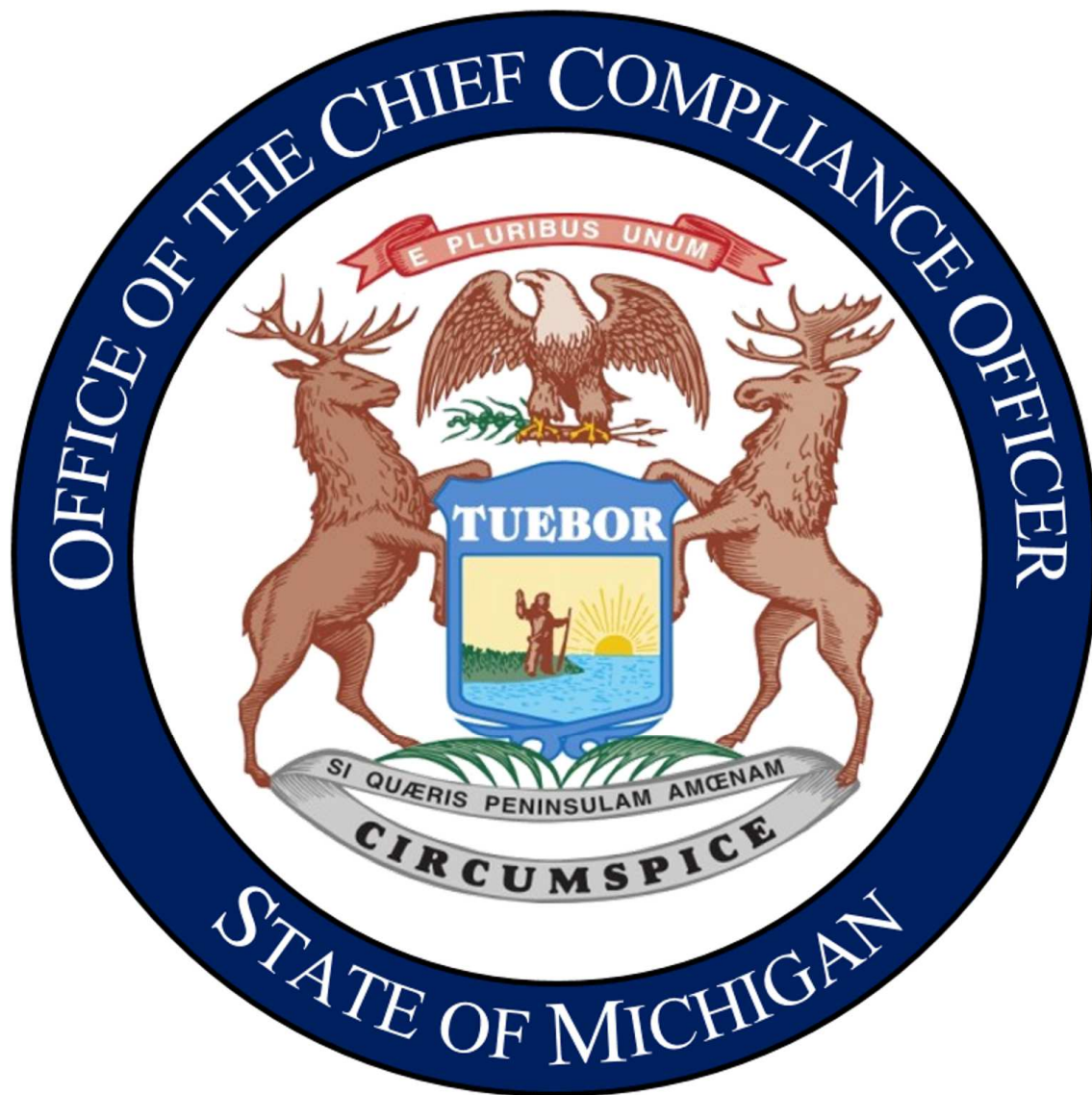
Gary Randall, Clerk  
House of Representatives

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

RE: Annual Report of the Office of the Chief Compliance Officer – Fiscal Year 2015

Attached is the Annual Report of the Office of the Chief Compliance Officer for fiscal year 2015, 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 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. I am pleased to report that diligent work by all involved ensured that all compliance matters that were addressed during the fiscal year 2015 were successfully resolved or are being appropriately addressed as more completely described in the attached Annual Report.

ANNUAL REPORT OF THE  
OFFICE OF THE CHIEF COMPLIANCE OFFICER



FISCAL YEAR 2015

OCTOBER 1, 2014 – SEPTEMBER 31, 2015

## **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 (the Office) was created as an autonomous entity within the Michigan Strategic Fund (MSF) by the legislature on November 21, 2005 by 2005 Public Act 225, MCL 125.2088i. The Chief Compliance Officer (CCO) is the executive head of the Office but is appointed by and reports directly to the State Administrative Board.<sup>1</sup> 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 Chief Compliance Officer 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

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<sup>1</sup>The 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.

- Assist in the establishment of policies and procedures to conduct background checks on applicants for grants, loans, or other economic assistance 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.
- Prepare 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.
- To the extent necessary to carry out responsibilities under Chapter 8A, MCL 125.2088 – MCL 125.2088r, contacts persons receiving awards, investments, grants, and loans under the Act.
- 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, 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 were 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, statutory RFP requirements, authorized use of 21st century job fund funds, and compliance with established MSF Board policy and limitations.

Governor Snyder issued Executive Order 2014-12 reconstituting the MSF Board and transferring the MSF as an autonomous agency from the Department of Treasury to the Department of Talent and Economic Development.

Several amendments were made to the statutes governing the MSF, including: modifying, expanding, and consolidating reports to the legislature and posting those reports online, (2014 PA 503; 2014 PA 506; 2014 PA 453; 2014 PA 454); adding requirement for site visit guidelines

and reports and certification be posted online, (2014 PA 503); modifying the tobacco fund disbursement to the 21st Century Fund, (2014 PA 504); modifying or adding program funding restrictions and authority, (2014 PA 505); changes to the community revitalization program, (2014 PA 506); adding port facilities as an economic development project, (2014 PA 507); adding the Michigan Economic Development Corporation to those to whom the MSF board may delegate certain functions and authority, (2014 PA 507); and, adding the express authority to appoint any individuals, including MSF and Michigan Economic Development Corporation employees, to boards to represent the interests of the MSF, (2014 PA 454).

In preparation for the requirement to post site visit guidelines and report on the compliance with the guidelines, the CCO assisted the MSF in drafting or updating site visit guidelines 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. The Site visit guidelines were posted online as required and site visits were performed pursuant to the guidelines.

The CCO conducted a review of the limits on use of the funds in the jobs for Michigan investment fund as related to programs under Chapter 8C, MCL 125.2090 *et seq.*, and other programs under Chapter 8A, MCL 125.2088 *et seq.* In order to assist in the protection of the State's assets consistent with the requirements of applicable state and federal law the CCO provided guidance on the proper use of funds for investments from the Jobs for Michigan Investment Fund (Permanent Fund). The CCO provided advice regarding changes to the procurement authority of the MSF Board made by Executive Order 2014-12. The CCO assisted the MSF with updating the Community Revitalization Program guidelines.

The Office of the Auditor General released its report on internal control, compliance, and other matters for FY 2014. (Report Number 271-0401-15M). The Auditor General made two findings regarding insufficient internal controls in accuracy and timeliness of the MSF's financial reporting. It should be noted that subsequent to the Auditor General's review adjusted entries were recorded to correct most of the identified misstatements and the final financial statements were materially correct. The MSF submitted its required correction plan agreeing with the OAG's findings and committing to having the corrections completed by November 25, 2015.

#### **SUGGESTED REVISIONS TO AGENCY POLICIES AND PROCEDURES.**

Based on the close collaboration and willingness of MSF and MEDC staff to both seek advice proactively and the follow the guidance and recommendations of the OCCO no substantive changes are recommended to existing 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 L. Francart  
Chief Compliance Officer  
Office of the Chief Compliance Officer