



STATE OF MICHIGAN
OFFICE OF THE CHIEF COMPLIANCE OFFICER
LANSING

RICK SNYDER
GOVERNOR

KEVIN FRANCCART, ESQ.
CHIEF COMPLIANCE OFFICER

MEMORANDUM

March 31, 2015

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

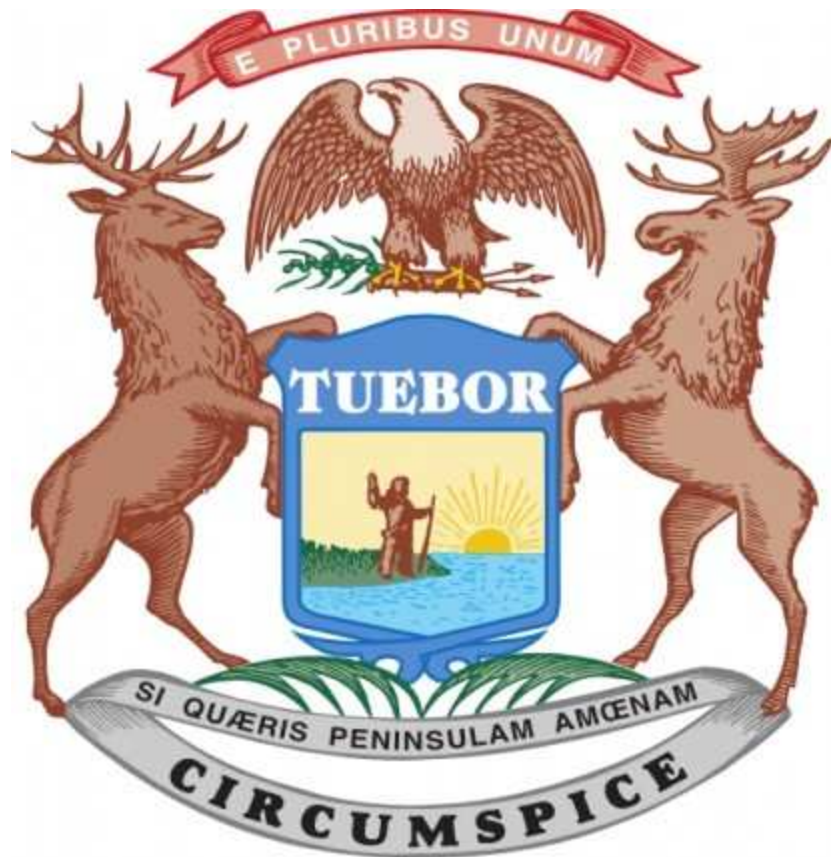
Gary Randall, Clerk
House of Representatives

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 2014

Attached is the Annual Report of the Office of the Chief Compliance Officer for fiscal year 2014, 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 2014 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 2014

OCTOBER 1, 2013 – SEPTEMBER 31, 2014

INTRODUCTION:

The Office of the Chief Compliance Officer (OCCO) was created as an autonomous entity within the Michigan Strategic Fund by the legislature in 2005. Its primary function is to protect the State's assets consistent with the requirements of the Michigan Strategic Fund Act by assisting the Michigan Strategic Fund (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, or employees or agents of the MSF fund board, and correct such violations promptly.

ORGANIZATIONAL STRUCTURE

The OCCO was created on November 21, 2005 by 2005 Public Act 225. The Chief Compliance Officer is the executive head of the Office but is appointed by and reports directly to the State Administrative Board. 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.

RESPONSIBILITIES

The OCCO 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.
- Assist in the establishment of policies and procedures to conduct background checks on each qualified business applying for a grant, loan, or other economic assistance under the Michigan business development program pursuant to MCL 125.2088r.
- 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.
- Approves certain transactions under the Michigan film and digital media investment loan program pursuant to MCL 125.2088d.

REPORTS

The Chief Compliance Officer (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 last annual report presented by the CCO was for the period covering July 1, 2009 through June 30, 2010. The former CCO retired on June 30, 2011, and the office of the CCO was vacant until the current CCO assumed office on November 11, 2013.

The OCCO 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 Michigan Economic Development Corporation (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 OCCO, 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. An internal compliance division was established within the MEDC and works closely with the OCCO on matters related to compliance with policies, procedure, and applicable laws.

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. With assistance from the MEDC, the AG, and the OCCO, the MSF Board adopted a new conflict of interest policy.

The MSF is required, with assistance from the MEDC and the OCCO, to establish policies and procedures to conduct background checks on applicants under the Michigan Business Development Program. The MSF Board adopted an updated background check policy. The CCO noted that the MSF's Background Check Policy extends to additional 21st century jobs fund programs, exceeding the minimum requirements for due diligence in those other programs, and increasing the protection of the State's assets.

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. The CCO recommended the MSF Board compile the various grants of delegated authority into a single authoritative compilation 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; standard processes; and standard policies, in force into an official compilation in its amended and restated bylaws. The general authority compilation portion of the official compilation of general delegated authority; standard processes; and standard policies, in force, as required by the bylaws was finished and 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 OCCO. 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.

The CCO also provided formal advice to the MSF Board and staff. The CCO issued an Opinion that an RFP process that includes the requirements of MCL 125.2088k(3)(a)-(k) is sufficient to comply with the requirement that the grants and loans be awarded through a competitive process and that issuing an RFP is not the establishment of a program under MCL 125.2088k and does not trigger the notice requirements and public hearing requirement under subsection (8). The CCO approved an amended Background Check Policy and a MSF Board Conflict of Interest Policy. The CCO advised staff regarding the timing of a municipality's staff, financial, or economic commitment to a Business Development Program project as required under MCL 125.2088r(3)(a). The CCO advised staff regarding the use of funds for the Michigan community revitalization program under Chapter 8C, MCL 125.2090 *et seq.* Finally, the CCO reviewed the progress of the MSF's compliance with its corrective action plan to address the 2013 Performance Audit of the 21st century jobs fund programs (Report Number 271-0410-13) performed by the Office of the Auditor General. The MSF was required to be in compliance in FY2014 with two findings made in the 2013 Performance Audit: "Monitoring of Recipients" and "Reporting Requirements":

- Finding – "Monitoring of Recipients":
 - The MSF Corrective Action Plan required random sampling for Michigan Defense Center, PTACs self-reporting, and full sampling of all PTACs annually with the results entered into Salesforce.
 - The CCO reviewed records demonstrating that the MSF has performed random sampling of PTACs. The MSF reports that 11 of 11 PTACs have been reviewed. The MSF provided a copy of the Salesforce report showing all 11 results had been entered.
 - The MSF Corrective Action Plan required the standardization of site visit requirements for Centers of Energy Excellence.
 - All of these grants are reported closed and no further reporting required.
 - The MSF Corrective Action Plan required the institution of a policy to enforce timely progress reports and follow up if progress reports are past due.
 - The MSF provide a copy of the instituted policy and produced a progress report for review upon request.

- Finding – "Reporting Requirements":
 - The MSF Corrective Action Plan required the establishment of procedures to verify self-reported data by companies in 21st century jobs fund programs to confirm the accuracy of their reporting.
 - The MSF has established or updated procedures to verify self-reported data. Additionally, the compliances responsibilities were separated from the business units managing the programs and review of the procedures is ongoing.
 - The MSF Corrective Action Plan required the MSF to assess the materiality of subsequent known events in the period between close of the fiscal year and the date of reporting to the Legislature and report any subsequent events determined to be material. Additionally, the MSF Corrective Action Plan also required steps to be taken to ensure program information reported to the Legislature is accurate for all 21st century jobs fund programs and verification that certain carry-forward data reported in the prior year's annual report is consistently reported the following year. Lastly, the MSF Corrective Action Plan required the verification that there is no missing data in the annual reports to the Legislature and that all statutory requirements for reporting are met.

- The MSF submitted its report to the legislature on March 31, 2014. The MSF expanded the information included on programs and participants in the report, however, subsequent review by the Office of the Auditor General is required before satisfactory compliance can be determined.

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

ADDENDUM:

After the reporting period but before publication several substantive changes were made to the Michigan Strategic Fund Act by the following acts: 2014 PA 453; 2014 PA 454; 2014 PA 503; 2014 PA 504; 2014 PA 505; 2014 PA 506; and 2014 PA 507. Additionally, changes were made to the MSF by Executive Order 2014-12, effective March 16, 2015.