

**MICHIGAN STRATEGIC FUND**

**RESOLUTION**

**2019-063**

**BACKGROUND REVIEW POLICY**

**WHEREAS**, Public Act 270 of 1984, MCL 125.2001 *et seq.* (the “MSF Act”), established the Michigan Strategic Fund (the “MSF”);

**WHEREAS**, Public Acts 215 and 225 of 2005 established the 21st Century Jobs Fund initiative (the “21<sup>st</sup> Century Jobs Fund”);

**WHEREAS**, the Michigan Economic Development Corporation (“MEDC”) provides administrative services to the MSF;

**WHEREAS**, pursuant to Section 88c(4), MCL 125.2088c(4), of the MSF Act, the MSF is required to establish requirements toward prohibiting providing incentive awards under sections 88d, 88e, 88f, 88g, 88k, 88q, and 88r and Chapter 8C to applicants with certain criminal convictions or civil liabilities;

**WHEREAS**, on March 25, 2014, the MSF adopted background review guidelines as required under Section 88c(4) of the MSF Act for all programs operated by the MSF (the “Background Review Policy”);

**WHEREAS**, on May 22, 2018, the MSF adopted a revised Background Review Policy;

**WHEREAS**, the MEDC recommends that the MSF adopt the revised Background Review Policy attached to this Resolution; and

**WHEREAS**, the MSF wishes to adopt the revised Background Review Policy attached to this Resolution.

**NOW, THEREFORE, BE IT RESOLVED**, the MSF adopts the Background Review Policy attached to this Resolution.

Ayes: Paul Gentilozzi, Jeremy Hendges, Stephen Hicks, Larry Koops, Andrew Lockwood (on behalf of Treasurer Eubanks, designation attached), Jeff Mason, Terrence J.L. Reeves, Terri Jo Umlor, Shaun Wilson

Nays: None

Recused: None

Lansing, Michigan  
April 23, 2019

<b>Michigan Strategic Fund Background Review Policy</b>	Eff. March 25, 2014
	Rev. April 23, 2019

**Background**

Section 88c(4) of the Michigan Strategic Fund (“MSF”) Act, MCL 125.2088c(4), requires the MSF Board to establish requirements to ensure that money expended under Sections 88d, 88e, 88f, 88g, 88k, 88q and 88r and Chapter 8C of the MSF Act shall not be used for any of the following:

- 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. 125.2088c(4)(a)
  
- 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. 125.2088c(4)(b)

The guidelines and procedure outlined in this Background Review Policy (the “Policy”) shall be used to satisfy the requirements of Section 88c(4) of the MSF Act and as part of the due diligence process for programs and activities created and operated by the MSF. The Michigan Economic Development Corporation (“MEDC”) will perform the civil and criminal background reviews for the MSF in accordance with this Policy.

**Definitions**

“**Applicant**” means a sole proprietorship, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, profit or nonprofit corporation including an institution of higher education, public utility, municipality, local industrial development corporation, economic development corporation, other association of persons organized for agricultural, commercial, or industrial purposes, or any other entity seeking the benefit of an incentive from the MSF.

“**Certification and Disclosure Form**” means the form(s) completed by the Applicant and the Key Individuals and Key Owners, as applicable, that contains the information necessary for the MEDC to perform a civil and criminal background check, as may be revised by the MEDC from time to time.

“**Key Individuals**” means the Applicant’s Chief Executive Officer, or the similarly situated person in charge of the Applicant’s executive operations; the Chief Financial Officer, or the similarly situated person in charge of the Applicant’s financial affairs; the Chief Operation Officer, or the similarly situated person in charge of the Applicant’s daily operations; and the individual who is responsible for managing the MSF incentive for the Applicant.

“**Key Owners**” means, if the Applicant is a business entity, any individual or business entity that, directly or indirectly, holds a pecuniary interest of 20% or more in the Applicant.

“**SEC**” means the United States Securities and Exchange Commission.

**Guidelines**

1. Any Applicant seeking an MSF incentive in the amount of \$15,001 or more is subject to a civil and criminal background check.

- a. If the Applicant (or the Applicant's direct parent company) is a publicly traded domestic issuer and has filed all of its required SEC filings, then a review of the publicly traded domestic issuer's public filings for previous eight (8) fiscal years may be conducted to satisfy the requirements of this Policy.
  - b. SEC filings for foreign private issuers may also be used to satisfy the requirements of this Policy if the Applicant (or the Applicant's direct parent company) has filed 20-F forms, as amended, from time to time by the SEC, for the previous eight (8) fiscal years.
  - c. A review of the ultimate parent's public filings for the previous eight (8) fiscal years may be conducted to satisfy the requirements of this Policy if:
    - i. The Applicant's ultimate parent is a publicly traded domestic issuer, has filed all of its required SEC filings, and directly owns 100% of the Applicant's direct parent company.
    - ii. The Applicant's ultimate parent is a foreign private issuer, has filed 20-F forms, as amended, from time to time by the SEC, for the previous eight (8) fiscal years, and directly owns 100% of the Applicant's direct parent company.
2. Key Individuals and Key Owners of any Applicant that does not meet the criteria of Sections (1)(a)-(c) are subject to a civil and criminal background check.
3. If the Applicant is a non-profit organization, municipality or an institution of higher education, the Applicant, the Applicant's Key Individuals, and the Applicant's Key Owners (as applicable) may be exempted from this Policy, in part or in whole except for the individual who is responsible for managing the MSF incentive for the Applicant and for Paragraph 5 of the Guidelines Section, at the discretion and approval of the MSF Chairperson and the MSF Fund Manager, with both required to act.
4. In the case of incentives that flow through a financial institution or any entity from the MSF for the benefit of an Applicant, the Applicant, the Applicant's Key Individuals, and the Applicant's Key Owners are subject to a civil and criminal background check in lieu of a civil and criminal background check on the flow through financial institution or entity.
5. All final written agreements memorializing an incentive from the MSF shall 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 88c(4)(a) and 88c(4)(b) and will not use the funds for the prohibited purposes described in Sections 88c(4)(c)-(e).
6. The MSF President and the MSF Fund Manager, with only one required to act, may request additional reviews of any Applicant, its Key Individuals, Key Owners, or any other person or entity at his or her discretion.

## Procedure

1. Applicants provide MEDC Staff with completed Certification and Disclosure Forms.
2. MEDC Staff will conduct a civil and criminal background check using Westlaw, LexisNexis, or another similar program that performs civil and criminal background checks covering the previous eight (8) calendar years, in accordance with this Policy. However, this time limitation does not waive this Policy or procedural requirements for any matters that are disclosed or discovered during the civil and criminal background check and are covered by Paragraphs 3, 4 and 5 of the Procedure Section.
3. If a background check results in a finding of a criminal conviction described under Section 88c(4)(a), the potential incentive may not proceed through the process to a final written agreement.
4. If a background check results in a finding of a criminal conviction or civil liability described under Section 88c(4)(b), the potential incentive may continue through the process to a final written agreement only upon the occurrence of all of the following:
  - a. The Applicant submits in writing an explanation of the findings and mitigating circumstances that it believes support that the findings do not negatively reflect on the business integrity of the Applicant, its Key Individuals, and its Key Owners.
  - b. The MSF President and the MSF Fund Manager may, but are not obligated to, consider the mitigating circumstances; and
  - c. For the potential award to proceed through the process to a final written agreement, the results of the civil and criminal background check must be satisfactory to (i) the MSF President and the MSF Fund Manager after discussion with the MEDC General Counsel or (ii) the MSF Board.
5. The MSF President and the MSF Fund Manager, with only one required to act, may consider any other factor which, in their sole discretion, prohibits the potential incentive from proceeding to a final written agreement.



STATE OF MICHIGAN  
DEPARTMENT OF TREASURY  
LANSING

GRETCHEN WHITMER  
GOVERNOR

RACHAEL EUBANKS  
STATE TREASURER

February 26, 2019

Ms. Rhonda Bishop  
Board Relations Liaison  
Michigan Strategic Fund Office  
300 N. Washington Square  
Lansing, MI 48913

Re: Michigan Strategic Fund Board Meeting Designee for Treasurer Eubanks

Dear Ms. Bishop:

I hereby designate Andrew Lockwood to attend all Michigan Strategic Fund meetings that I am unable to attend in 2019.

If you need anything additional, please contact Kara Kabia at (517) 241-2624.

Sincerely,

A handwritten signature in blue ink that reads "Rachael Eubanks".

Rachael Eubanks  
State Treasurer

Cc: Eric Bussis  
Andrew Lockwood