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Performance Audit Division:
Economic Development Bond Audit
Mississippi Development Authority
ACE Fund Program
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Executive Summary

The ACE Fund program is a program created by the Legislature and administered by the Mississippi Development Authority. The legislature has authorized just under \$100,000,000 since 2011 to fund, or maximize, extraordinary economic development opportunities related to new or expanding business within the State. The Office of the State Auditor (OSA) reviewed the ACE Fund attempting to determine whether the fund was operating efficiently, and whether MDA is properly monitoring the operations of the fund. During this review, OSA focused on thirty projects within the ACE Fund. The primary concentrations of the review were bond issuances, compliance with the Mississippi Employment Protection Act, administrative costs, and program compliance with ACE Fund guidelines. When analyzing the bond issuances of the ACE Fund, OSA found that the Fund did comply with MS Code §57-1-16(1)(a) to provide opportunities to new or expanding businesses.

OSA was unable to determine whether projects within the ACE Fund have been adhering to the guidelines of the Mississippi Employment Protection Act (MEPA). This was because files required to verify compliance were incomplete and lacked proper documentation. According to MS Code §57-1-16 (2)(b), reimbursement of costs for grants should not exceed three percent, yet, OSA found that the Fund failed to comply with this statute. MDA has been authorized \$2,826,000 in administrative costs from bond issuances from 2011-2017, but an actual accounting of the necessary costs could not be determined by OSA due to failed practices. Finally, OSA found that the ACE Fund, overall, is being administered effectively by MDA, and is complying with guidelines for approval of projects. However, in order for MDA to follow legislative intent completely, MDA should consider and implement the recommendations made by OSA in this report.

Introduction

The Office of the State Auditor (OSA) conducts compliance and performance audits of both programs and projects administered by the Mississippi Development Authority (MDA) in accordance with the Mississippi House Bill 1318 (2014 Regular Session). OSA's goal is to conduct audits that provide accurate, unbiased information on the performance of State programs or projects. Compliance and performance audits typically evaluate resource efficiency, statutory, regulatory and policy compliance, and whether or not programs are

effectively carrying out their duties. MDA is the primary State agency that offers grants or loans to assist economic improvements in the areas of jobs, construction, and capital investments.

This review attempts to give a summary of the ACE Fund (Fund) and evaluates MDA compliance with the governing statute(s). Initially, the Mississippi Legislature enacted the ACE Fund during the 2000 Second Extraordinary Session (MS Code §57-1-16). The stated goal of the Fund is to maximize extraordinary economic development opportunities



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related to any new or expanding businesses or industries in the State. OSA’s objectives were to:

- determine compliance with program guidelines;
- determine if internal controls were effective and efficient;
- determine if MDA effectively monitors the grants awarded;
- determine if the program is being used as the legislation intended;
- verify whether or not companies receiving funding met performance requirements;
- verify compliance with the Mississippi Employment Protection Act (MEPA); and
- determine if grant funds were properly dispersed.

While developing the audit objectives, OSA selected a random 20% sample of the program files. During the review of the ACE Fund, which began on April 2, 2018, OSA reviewed 30 active project files. The total amount of the grants reviewed was \$234,750,000.

ACE Bond Issuance

For MDA administered programs, the State’s bond commission has the authority to issue general obligation bonds for the programs authorized in MS Code §57-1-16. The awarded company is also expected to make a capital investment and/or maintain/create a number of jobs required under the terms of the project. While reviewing the ACE program, OSA found the program **did comply** with §57-1-16(1)(a) to provide opportunities to new or expanded businesses or industries which maintain a strong financial condition. With this intention, the Legislature has approved a total of **\$94,200,000** in bond issuances to the ACE Fund since 2011. Chart 1 below lists the issuance amounts approved by Mississippi legislature.

Chart 1

Legislation	Bond Issuance
2011 Session SB3100	\$ 10,000,000
2013 Session SB2913	\$ 10,000,000
2014 Session HB787	\$ 10,000,000
2014 Session SB2975	\$ 20,000,000
2015 Session SB2906	\$ 29,200,000
2016 Session HB1729	\$ 5,000,000
2017 Session SB3033	\$ 10,000,000
Total	\$ 94,200,000

Source: State Authorizing Legislative Statutes

Compliance with MEPA

In 1997, US law established the E-verification pilot program that encouraged all employers to conduct employee status verifications to identify who may legally work in the United States. Later, the State of Mississippi passed the Mississippi Employment Protection Act (MEPA) in Senate Bill 2988 of the 2008 Regular Legislative Session. Although, this is now both a Federal and State law, the OSA **was unable to determine** if the ACE program ensured that each project applicant had properly registered with the federal status verification system by July 1, 2011.

MDA’s Memorandum of Agreement also states that each project will adhere to the Mississippi Employment Protection Act which states “...each employer shall register with, and utilize the status verification system to verify the federal employment authorization status of all newly hired employees...” Evaluation of the sample project files showed sampled files had missing records and **failed to provide** evidence or documentation that verified the business or industry had completed this process as required by State law.

Therefore, the companies’ verification of newly hired employees **could not be determined** at the time of the audit. OSA recommends that MDA ensure that each applicant submit proof of enrollment into the federal verification system and adhere to MEPA by requesting a copy of the enrollment confirmation form and maintaining these records in a permanent file.



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ACE Fund Administrative Costs

MS Code §57-1-16 (2)(b) states “...monies in the fund which are derived from the proceeds of general obligation bonds may be used to reimburse reasonable, actual, and necessary costs incurred by the MDA in providing assistance under this section through the use of general obligation bonds. An accounting of actual costs incurred for which reimbursement is sought shall be maintained for each grant by the MDA. Reimbursement of necessary costs for grants shall not exceed three percent (3%)...”

However, OSA’s test procedure determined the program **failed to comply** with §57-1-16(2)(b) as the agency does not maintain an accounting of actual cost of the 3% administrative cost. Documentation from interviews with MDA’s accounting staff and the request for verification of each grant’s administrative costs determined the administrative cost is applied as a “general use application” toward the overall ACE program. MS Code §57-1-16 (2)(b) states “...An accounting of actual costs incurred for which reimbursement is sought shall be maintained for each grant by the MDA...”

OSA recommends MDA keep an accurate account of the actual administrative costs determined from each bond issuance, as required by law, or consider a request for modification in the law to mimic its current practice of using the funds in a general distribution for the program. To date, MDA was authorized a total of **\$2,826,000** in administrative costs from each bond issuances for years 2011-2017. (See chart 2) Unfortunately, an accounting of reasonable, actual, and necessary costs incurred by the MDA for administrative costs **could not be determined** due to practices that failed to clearly identify each project percentage of administration costs actually utilized.

Chart 2

Bond Issuance	3% Admin Cost Authorized
\$ 10,000,000	\$ 300,000
\$ 10,000,000	\$ 300,000
\$ 10,000,000	\$ 300,000
\$ 20,000,000	\$ 600,000
\$ 29,200,000	\$ 876,000
\$ 5,000,000	\$ 150,000
\$ 10,000,000	\$ 300,000
Total	\$ 2,826,000

Source: OSA Estimated Administrative Cost

Compliance with ACE Fund Guidelines and Application Requirements

Program guidelines are intended to serve as planning, implementation, and evaluation tools for all programs. Although they may allow for exceptions, as MDA’s guidelines permit for the ACE Fund, they should maintain a transparent mission, purpose, and goal set forth for achievement of the program’s outcome and accountability. Any business desiring assistance from a local economic development entity through the Fund should demonstrate that the business meets the definition of an extraordinary economic development opportunity as follows:

- a new or expanded industry that maintains a strong financial condition, minimal credit risk, and creates substantial employment (particularly in areas of high unemployment);
- provides a statement that expresses the cost of the requested assistance;
- provides a statement of the measures taken to secure other funds;
- provides a rationale statement for locating the new or existing industry in an economically disadvantaged County; and
- demonstrates that all application requirements have been met prior to approval.

OSA finds the ACE fund is administered effectively, is following its general program guidelines outlined for oversight and approval of program funds



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with the necessary evidence to support approval of the program, and has provided the necessary required documents to support disbursement of funds on a reimbursement or services rendered basis. MDA has certain required applications that must be considered before approval.

OSA found some files **failed** to maintain the necessary required documentation in the assigned administrative filing system that was utilized at the time of the audit. OSA recommends MDA ensure that all required documentation is maintained in each project file for transparency and completion of the approval of the project for the award.

Further, OSA was unable to identify a maintenance period for job creations in the grant agreement. Therefore, OSA *recommends* that MDA should not only require an established number of jobs to be created, but also should consider a job maintenance period that is sufficient to the grant award. MDA should maintain sufficient documentation to identify the jobs that were created.

Site Visits

As part of the monitoring process, OSA conducted site visits to collect evidence of project success and retention. OSA conducted 11 site visits to determine the viability and legitimacy of both current and past applicants that received grant funds. While conducting these visits, OSA was able to evaluate the current physical status and productivity of the project to verify that the recipient met the goals of the program. Also, OSA evaluated whether or not there was a benefit to the County and State taxpayers. OSA found 3 of the 11 sites were not viable at the time of the audit.

Conclusion

In conclusion, the overall accomplishments of the program appear to be a success for the State of Mississippi. The Legislature's economic goal, job creation, and investment requirements were met.

As a final recommendation, OSA has outlined suggestions that could enhance the efficiency of the ACE program. While all recommendations listed below may not be applicable in all situations, MDA, should consider implementation of the following recommendations to improve the program:

- evaluate the reliability of data collected;
- evaluate how efficiently the agency is carrying out its responsibilities;
- periodically report to the public and policy makers the agency's activities, goals, and results achieved;
- develop applicable forms and procedures for collecting, analyzing, and reporting data and ensure that such forms are utilized;
- develop a detailed and independent monitoring process that includes supporting documentation;
- review and verify the data submitted for accuracy and reliability;
- conduct site visits and document the progression of project success, such as job creations, capital investment; and propose or adopt needed changes in laws, standard procedures, policies, etc., to ensure the program is operating as intended and is accomplishing its purpose.

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Findings and Recommendations

As a result of this review, OSA makes the following recommendations to MDA to help improve monitoring and oversight of any business or industry desiring assistance from the ACE Fund.

Finding 1	The MS Code §57-1-16 (2)(b) states “...monies in the fund which are derived from the proceeds of general obligation bonds may be used to reimburse reasonable, actual, and necessary costs incurred by the MDA in providing assistance under this section through the use of general obligation bonds. An accounting of actual costs incurred for which reimbursement is sought shall be maintained for each grant by the MDA. Reimbursement of necessary costs for grants shall not exceed three percent (3%)...” However, there was no evidence provided to verify how much of the 3% was utilized from each grant; as MDA only maintains a combined use of all funds for the overall program. (page 2)
Recommendation 1	OSA recommends MDA maintain an accurate accounting of the administrative costs determined from each bond issuance, or consider a request for modification in the law to mimic its current practice of general distribution for the program. (page 3)
Finding 2	MDA has certain required applications that must be considered before approval, but all files did not contain and/or maintain all requirements outlined in its policy.
Recommendation 2	OSA recommends MDA ensure that all required documentation is kept in each project file for transparency and completion of the approval of the project.
Finding 3	MDA’s Memorandum of Agreement states that each project will adhere to the Mississippi Employment Protection Act which states “...each employer shall register with, and utilize the status verification system to verify the federal employment authorization status of all newly hired employees...” (page 3)
Recommendation 3	OSA recommends that MDA ensure that each applicant submit proof of enrollment into the federal verification system and adhere to MEPA.