RESPONSE TO REPORT OIG-23-029 PURSUANT TO THE JAMES M. INHOFE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2023, PUBLIC LAW NO. 117-263, SECTION 5274

The Treasury Office of Inspector General attaches the following response received from specifically identified non-governmental organizations or business entities as required by the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Public Law No. 117-263, § 5274

The Treasury Office of Inspector General offers no comment and makes no representations, express or implied, of any nature with respect to the matters stated in the attached responses.

Andrew Berke
875 15th Street, N.W.
Washington, D.C. 20005
Via email: [redacted]

Re: Audit of Air Carrier Worker Support Certifications – Bird Acquisition, LLC
OIG-23-029

Dear Mr. Berke,

This will respond to, clarify and provide specific additional context regarding the June 13, 2023 Audit Report of Treasury's Office of the Inspector General regarding Bird Acquisition, LLC (the "OIG Bird Report"). Specifically, this will focus on elements of the Report that failed to fully consider available information regarding the two positions at issue.

We believe the findings and conclusions of the OIG Bird Report regarding unallowable corporate officer compensation are flawed in two respects: a) the finding that the Vice President of Domestic Flight Program was a corporate officer was due to an inconsistent application of the definition of corporate officer in the PSP1 Agreement[1], and b) the failure of the audit to consider that the actual duties and responsibilities of the Vice President of International Sales took her out of the category of "officer" as that term is defined.

Chief Instructor/Vice President of Domestic Flight Program

By way of background and as the audit team was aware, Bird Acquisition ("Bird") trained Chinese, Korean and domestic pilots, although the way in which the students made their way to Bird followed different paths. Bird was a party to contracts with several Chinese airlines, under which an airline sends student pilots to Bird for training. Once the pilots have completed the training, they return to the airline that sent them. Korean students come to Bird either individually or through Bird's agreement with Korean Aeronautical University, a customer of Bird. Finally, domestic students come to Bird individually, almost always through Bird's Enrollment Advisors.

Chinese students were distinctly the largest group of students at Bird, making up 68% of the total in July 2019. Korean and other international students made up 9% and domestic students made up 21%. Before (b) (6) [redacted] joined the management committee of the company on July 1, 2019 as Vice President of Domestic Flight Programs, the makeup of the student population dictated that both (b) (6) [redacted] and Mr. (b) (6) [redacted] occupied the position of Chief Instructor. Prior to July 2019, the Vice President of Domestic Flight Programs was not in charge of a business unit, did not have a policy making function and only worked with approximately 30% of the students trained by Bird Acquisition during the audit scope period.

[1] See, OIG Bird Report, p. 10-11.

The curriculum oversight of the remaining (Chinese) students was performed by the other Chief Instructor, (b) (6) (b) (6) role was decidedly more in line with a subject matter expert than (b) (6) (b) (6) (b) (6) s duties and responsibilities included traveling to satellite campuses to audit operational and regulatory compliance, ensuring that appropriate processes and procedures were being followed; improvement of operational efficiency; streamlining the instructor onboarding process; maximizing stage check scheduling; and mentoring satellite campus directors to improve proficiency.

The relevant definition of corporate officer as set out in the May 26, 2020 signed PSP1 Agreement is central in this analysis *and* was the operative definition used by Bird:

"[W]ith respect to the Recipient, its president; any vice president in charge of a principal business unit, division, or function (such as sales, administration or finance); any other officer who performs a policy-making function; or any other person who performs similar policy making functions for the Recipient. Executive officers of subsidiaries or parents of the Recipient may be deemed Corporate Officers of the Recipient if they perform such policy-making functions for the Recipient."

The OIG Bird Report clearly did not accord weight to the definition by which Bird measured their reporting obligations as (b) (6) job duties and responsibilities were distinctly different than those of an officer charged with leading a principal business unit and engaged in policy making functions for the company. The descriptions of his job functions make clear that he did not function like a traditional vice president does - and very different from the relevant definition on which Bird relied.

<u>The VP of International Sales</u>

The OIG Bird Report also fails to consider the actual role and function of the person with the title Vice President of International Sales. The actual duties of the job, presented in some detail to the auditors, are far short of the relevant definition in many respects.

First, the VP's only job was to generate international contracts (similar to the Korean Aeronautical University contract). Bird employed several persons as Enrollment Advisors who marketed to domestic students and potential students for Bird. The VP's job, on the other hand, involved meeting with certain international airlines (but, notably, *not* Chinese airlines, discussed more later) to sell them on Bird's pilot training and safety programs. Indeed, as explained to the auditors, the title of Vice President was only conferred to enhance contacts with and presentations to potential customers.

Second, the VP *supervised no one and no Bird employees reported to her*. She was not responsible or accountable for domestic sales and reported *only on her own behalf* to James Constable, the CMO (and not the CEO), during the period in question. We believe the OIG Bird Report should have considered evidence provided to the auditors such as the VP's 2018 Annual Performance Review. Among other things, the review assessed the VP's supervision of staff, staff accountability and staff development. *Both are marked "N/A" because the position did not supervise or oversee anyone but herself.*

Third, the position of VP was never created or intended to align with the relevant definition. This was illustrated by the VP's offer letter, also provided to the auditors, which specified that the position was compensated *only on the VP's own sales performance*, not on the performance of others or of a sales division as would be the case for one who is "in charge of a principal business unit, division of function." The offer letter also specifically excluded the U.S., China, Hong Kong and Taiwan markets (the largest markets) from responsibility.

The OIG Bird Report points to little if any support (because there is none) for the auditors' determination that an employee who supervises no one, reports to a supervisor and is a small part of a principal business unit (sales) fits the relevant definition of officer. The available information illustrated the stark difference between what the job actually was and the title it carried, which we believe the OIG Bird Report should have considered.

Thank you for your attention and consideration. We are, of course, available to answer any questions you may have.

Sincerely,

Steven Kruczek
Chief Financial Officer