



Office of the Special Inspector General for  
Pandemic Recovery  
Office of Audits

September 21, 2021

Addendum to Alert Memorandum: Caribbean Sun Airlines, Inc. has not Responded to the Department of the Treasury's Notice of Non-Compliance with the US Treasury Aviation Loan and Guarantee Agreement (Report Number: SIGPR-A-21-002)

On September 8, 2021, we issued Alert Memorandum: Caribbean Sun Airlines, Inc. has not Responded to the Department of the Treasury's Notice of Non-Compliance with the US Treasury Aviation Loan and Guarantee Agreement (Enclosure 1). The alert memorandum discussed that Caribbean Sun Airlines, Inc. (Caribbean Sun) had not complied with the Department of the Treasury's (Treasury) Notice of Non-Compliance.

The alert memorandum recommended Treasury take immediate action, under the authority provided for in §7.01 – Events of Default of the Loan and Guarantee Agreement. The Events of Default clause allowed Treasury to declare the loan to be due and payable in whole or in part.

On September 13, 2021, we received a copy of Caribbean Sun's response which was provided to Treasury's Program Manager for Aviation Loans and forwarded to us. On September 17, 2021, Treasury provided its response stating that it expects all borrowers to be fully compliant with their obligations under their loan agreements and although Caribbean Sun, while doing so late, did comply with the Non-Compliance Notification and submitted its survey response to SIGPR (Enclosure 2).

We appreciate Treasury's assistance in obtaining Caribbean Sun's response to our survey and the timely response and find Treasury's reply acceptable.



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**ENCLOSURE 1**



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# Alert Memorandum:

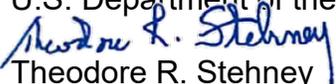
## Caribbean Sun Airlines, Inc. has not Responded to the Department of the Treasury's Notice of Non-Compliance with the US Treasury Aviation Loan and Guarantee Agreement

Report Number: SIGPR-A-21-002  
September 8, 2021



September 8, 2021

TO: Jacob D. Leibenluft  
Chief Recovery Officer  
U.S. Department of the Treasury

FROM:   
Theodore R. Stehney  
Assistant Inspector General for Auditing  
Special Inspector General for Pandemic Recovery (SIGPR)

SUBJECT: Alert Memorandum: Caribbean Sun Airlines, Inc. has not  
Responded to the Department of the Treasury's Notice of Non-  
Compliance with the US Treasury Aviation Loan and Guarantee  
Agreement  
Report Number: SIGPR-A-21-002

The purpose of this memorandum is to notify you that Caribbean Sun Airlines, Inc. (Caribbean Sun) has not responded to the Department of the Treasury's ("Treasury") Notice of Non-compliance with US Treasury Aviation Loan and Guarantee Agreement (the Agreement). We recommend Treasury take immediate action to address this non-compliance.

## Background

Section 4003, Division A, Title IV, Subtitle A of the Coronavirus Aid, Relief, and Economic Security Act of 2020 (the "CARES Act") authorizes the Treasury to make loans, loan guarantees, and other investments to provide liquidity to eligible businesses related to losses incurred as a result of the coronavirus pandemic. Sections 4003(b)(1)-(3) appropriated \$46 billion to help stabilize the airline industry and businesses critical to maintaining national security. SIGPR is tasked to provide oversight of CARES Act programs.

On December 7, 2020, Caribbean Sun obtained a loan from the Treasury under Section 4003 for \$6,768,749. Pertinent provisions of Caribbean Sun's Loan and Guarantee Agreement ("Agreement") state:

Treasury Access. The Borrower Eligible Business and its Affiliates will provide Treasury, the Treasury Inspector General, the Special Inspector General for Pandemic Recovery, and such other entities as authorized by Treasury timely and unrestricted access to all documents, papers, or other records, including electronic records, of the Borrower related to the Loans, to enable Treasury, the Treasury Inspector General, and the Special Inspector General for Pandemic Recovery to make audits, examinations, and otherwise evaluate the Borrower's compliance with the terms of this Agreement. This right also includes timely and

reasonable access to the Borrower's and its Affiliates' personnel for the purpose of interview and discussion related to such documents. Agreement, Section 10.07.

Events of Default. If any of the following events (each, an "Event of Default") shall occur:

(e) any Credit Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement or any other Loan Document . . . and such failure shall continue unremedied for a period of thirty (30) or more days after notice thereof by the Administrative Agent or the Initial Lender to the Parent . . . then, and in every such event...and at any time thereafter during the continuance of such event, the Initial Lender may, and the Administrative Agent may, and at the request of the Required Lenders or the Initial Lender shall, by notice to the Borrower, take any or all of the following actions, at the same or different times:

(i) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Obligations of the Credit Parties accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower and the other Credit Parties....

Agreement, Section 7.01.

## **Specific Concern**

On March 25, 2021, we issued a survey to Caribbean Sun but did not receive a response. On August 2, 2021, we issued an Alert Memorandum, notifying Treasury that Caribbean Sun was non-responsive. On August 3, 2021, Treasury issued a Notice of Non-compliance, requiring Caribbean Sun to respond to our survey within 30 days. (Appendix B).

Pursuant to Treasury's Notice of Non-compliance, issued on August 3, 2021, Caribbean Sun had until September 2, 2021, to respond to SIGPR's survey. As stated in Treasury's notice of non-compliance, failure to respond to SIGPR's survey by September 2, 2021, would constitute an "Event of Default" under Section 7.01(d) of the Agreement. An event of default would allow Treasury to pursue remedies under the Agreement, including declaring the loan immediately due and payable in whole or in part. As of the date of this report, Caribbean Sun has not responded to SIGPR's survey nor has it satisfied the loan.

## **Conclusion**

Caribbean Sun's lack of response to Treasury's Notice of Non-compliance with the US

Treasury Aviation Loan and Guarantee Agreement constitutes an “Event of Default” under Section 7.01(e).

## **Recommendation**

The Special Inspector General for Pandemic Recovery recommends that Treasury take immediate action under the authority provided in Section 7.01 of the Agreement.

Please provide a response to this recommendation along with any proposed corrective action. Your response will be incorporated in its entirety as an addendum to this memorandum.

## **Compliance Statement**

This audit is being conducted in accordance with generally accepted government auditing standards (GAGAS) which provides that during an audit, auditors may provide interim reports of significant matters to appropriate entity and oversight officials. Such communications alert officials to matters needing immediate attention and allows them to take corrective action before the final report is completed.

The related ongoing audit, when completed, will comply with GAGAS. The associated performance audit report that will be issued in the future will incorporate the issues discussed in this alert memorandum.

## **Audit Team**

This audit was managed and conducted by the individuals listed below:

Michael Sinclair	Audit Manager
Reynaldo Gonzales	Auditor-In-Charge
Renata Malionek	Auditor

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## ***Appendix A – Memorandum Distribution***

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Chief Recovery Officer – U.S. Department of the Treasury

Office of General Counsel – U.S. Department of the Treasury

Inspector General – Special Inspector General for Pandemic Recovery

Office of General Counsel – Special Inspector General for Pandemic Recovery

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## **Appendix B – Notice of Non-Compliance with the US Treasury Aviation Loan and Guarantee Agreement**

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### NOTICE OF NON-COMPLIANCE - SIGPR DIRECT LOAN PROGRAM SURVEY

August 3, 2021

Subject: Notice of Non-compliance with the US Treasury Aviation Loan and Guarantee Agreement

Caribbean Sun Airlines, Inc.  
6355 NW 36<sup>th</sup> Street, 100  
Virginia Gardens, FL 33166

Dear Tomas Romero:

We are writing regarding the loan that the U.S. Department of the Treasury (Treasury) made to Caribbean Sun Airlines, Inc. (Caribbean Sun) under Section 4003 of the Coronavirus Aid, Relief and Economic Security Act (CARES Act).

Caribbean Sun is not currently compliant with the Loan and Guarantee Agreement, dated as of November 5, 2020 (Loan Agreement), among Caribbean Sun, Treasury, and The Bank of New York Mellon (BNYM). Pursuant to Section 10.07 of the Loan Agreement regarding Treasury Access, Caribbean Sun must provide Treasury, the Treasury Inspector General, and the Special Inspector General for Pandemic Recovery (SIGPR) timely and unrestricted access to records, documents, and personnel related to the loan. Caribbean Sun has not responded to the SIGPR survey, issued on March 25, 2021.

Caribbean Sun must cure this violation by September 2, 2021, which is 30 calendar days from the date of this letter, by submitting the survey response to SIGPR. Failure to cure this violation by September 2, 2021 will constitute an Event of Default under Section 7.01(d) of the Loan Agreement. Treasury may pursue remedies under the Loan Agreement, including declaring the Loan immediately due and payable in whole or in part.

Please contact Treasury's Office of Recovery Programs at [CARESActCompliance@treasury.gov](mailto:CARESActCompliance@treasury.gov) if you have any questions.

Thank you

U.S. Department of the Treasury  
Office of Recovery Programs, CARES Act Compliance



Office of the Special Inspector General for  
Pandemic Recovery  
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## **ENCLOSURE 2**



Office of the Special Inspector General for  
Pandemic Recovery  
Office of Audits



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

September 17, 2021

Mr. Theodore R. Stehney  
Assistant Inspector General for Auditing  
Special Inspector General  
for Pandemic Recovery  
2051 Jamieson Ave., Suite 600  
Alexandria, VA 22314

Re: "Alert Memorandum: Caribbean Sun Airlines, Inc. has not Responded to the Department of the Treasury's Notice of Non-Compliance with the US Treasury Aviation Loan and Guarantee Agreement."

Dear Mr. Stehney:

I write in response to the above-titled Special Inspector General for Pandemic Recovery (SIGPR) Alert Memorandum, dated September 8, 2021, which states that Caribbean Sun Airlines, Inc. (Caribbean Sun) had not responded to a SIGPR survey despite Treasury's notice of August 3, 2021, that failure to do so within 30 days would constitute an event of default under the Loan and Guarantee Agreement between Treasury and Caribbean Sun. SIGPR recommended that Treasury take immediate action to address this non-compliance.

Treasury expects all of its borrowers to comply fully with their obligations under their loan agreements. Treasury promptly communicated to Caribbean Sun the importance of responding to SIGPR's survey, and two days after the issuance of the Alert Memorandum, Caribbean Sun submitted the completed survey. We are pleased that we could assist you in obtaining the requested information.

We look forward to working with SIGPR as we continue to operate programs under the Coronavirus Economic Stabilization Act of 2020.

Sincerely,

Jacob Leibenluft  
Chief Recovery Officer