



Audit Report



OIG-24-032

GOVERNMENT-WIDE FINANCIAL SERVICES

Audit of Direct Express Program Disputes Related to Certain Cardholder Accounts

September 9, 2024

Office of Inspector General
Department of the Treasury

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Abbreviations

CFPB	Consumer Financial Protection Bureau
CFR	Code of Federal Regulations
Comerica	Comerica Bank
Conduent	Conduent Incorporated
Direct Express	Direct Express® Debit MasterCard® program
FAA	financial agency agreement
Fiscal Service	Bureau of the Fiscal Service
OIG	Office of Inspector General
Regulation E	Electronic Fund Transfer (12 CFR Part 1005)
SLR	service level requirement
SR	service request
Treasury	Department of the Treasury

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Audit Report

September 9, 2024

Timothy E. Gribben
Commissioner
Bureau of the Fiscal Service

On June 18, 2018, we initiated an audit to review corrective actions taken by the Bureau of the Fiscal Service (Fiscal Service) related to recommendations made in previous Department of the Treasury (Treasury) Office of Inspector General (OIG) reports issued in 2014 and 2017. These reports related to a financial agency agreement (FAA)¹ with Comerica Bank (Comerica), a financial agent² designated to operate the Direct Express[®] Debit MasterCard[®] program (Direct Express). The first report related to this objective was issued on July 29, 2019,³ and the second report was issued on March 2, 2020⁴. We accomplished the overall objective of our engagement with the issuance of these two prior audits.

While we accomplished the objective of our initial engagement with issuance of the first two reports, this third report was initiated in response to complaints made by Direct Express cardholders who contacted our Office of Investigations. This report is limited in scope and included a review of 24 Direct Express cardholders' data for the period from January 1, 2018 through September 30, 2019.

¹ Treasury uses FAAs to designate financial agents. See footnote 2 for the definition of a financial agent.

² A financial agent is a commercial financial institution designated by Treasury to provide certain types of financial services for the federal government in accordance with applicable federal law. Under the National Bank Act and other statutes (such as 12 U.S.C. §265), the Secretary of the Treasury is authorized to designate financial agents to "perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them."

³ Treasury OIG, *Interim Audit Update – Matters for Consideration Prior to Fiscal Service's Selection of the Direct Express[®] Debit Card Program Financial Agent*, OIG-19-041 (July 29, 2019)

⁴ Treasury OIG, *Corrective Action Verification for Two Prior OIG Reports: (1) Fiscal Service Needs to Improve Program Management of Direct Express (OIG-14-031) and (2) Direct Express Bid Evaluation Documentation Requires Improvement (OIG-17-034)*, OIG-20-028 (March 2, 2020)

Due to the limited scope of the cardholder information reviewed, we make no overall conclusions regarding the Direct Express program compliance. Our focus for this audit was on customer service provided to these specific cardholders.

For the 24 cardholders that contacted our OIG Office of Investigations between August 28, 2018 and August 22, 2019 to report unusual activity on their debit cards, the objective of our review was to verify that Comerica and Conduent Incorporated (Conduent)⁵, a Comerica contractor that manages the Direct Express call center and processes claim disputes, complied with one provision of the *Electronic Fund Transfer*⁶ requirements within Regulation E, 12 Code of Federal Regulations (CFR) Section 1005.11 (Regulation E)⁷ and review the customer service provided to the cardholders. The focus of this report was to review these specific customer concerns about the timely processing of claim disputes and determine whether Fiscal Service's oversight of Comerica and its contractor's customer service was adequate.

For this audit, we focused on 12 CFR Section 1005.11(c), *Time limits and extent of investigation*. Our review did not include an in-depth review of other subsections of 12 CFR Section 1005.11 such as 12 CFR Section 1005.11(b), *Notice of error from consumer* and 12 CFR Section 1005.11(d), *Procedures if financial institution determines no error or different error occurred*. Our review did not include an assessment of the adequacy of the error⁸ investigations, nor do we opine on the final determinations made by Comerica/Conduent.

⁵ Conduent, a New Jersey digital interactions company, creates digital platforms and services for businesses and governments. Conduent provides such services as digital payments, claims processing, and customer care.

⁶ 12 CFR Part 1005, *Electronic Fund Transfer*

⁷ 12 CFR Section 1005.11, *Procedures for resolving errors*. See appendix 2 for the details of this procedure.

⁸ 12 CFR Section 1005.11(a), *Definition of error*; defines an error as the following (1) An unauthorized electronic fund transfer, (2) an incorrect electronic fund transfer to or from the consumer's account, (3) the omission of an electronic fund transfer from a periodic statement, (4) a computational or bookkeeping error made by the financial institution relating to an electronic fund transfer, (5) the consumer's receipt of an incorrect amount of money from an electronic terminal, (6) the consumer's request for documentation required by § 1005.9 or § 1005.10(a) or for additional information or clarification concerning an electronic fund transfer, including a request the consumer makes to determine whether an error exists under paragraphs (a)(1)(i) through (vi) of this section.

Our mission is to conduct independent audits, investigations and reviews to improve Treasury programs and operations, and prevent and detect fraud, waste, and abuse. The Consumer Financial Protection Bureau's (CFPB)⁹ mission is to protect consumers from unfair, deceptive, or abusive practices and act against companies that break the law. CFPB was created to provide a single point of accountability for enforcing federal consumer financial laws and protecting consumers in the financial marketplace. As such, we coordinated with CFPB, and they are aware of the Regulation E consumer complaints included in this report.

During the scope period covered by our audit, January 1, 2018 through September 30, 2019, Conduent was the approved contractor for Comerica. Subsequent to the audit scope period, effective January 3, 2020, Fiscal Service approved Comerica's use of Conduent and i2c, Inc¹⁰ as the financial agent's contractors. On January 31, 2020, a plan was implemented to transition the processing of all cardholder accounts with Conduent to i2c, Inc, by December 31, 2021. However, before the transition was complete, a decision was made to move all contract services back to Conduent. On August 4, 2021, Comerica with the approval of Fiscal Service began transitioning cardholder accounts back to Conduent, as the sole contractor. Our audit did not include the period when i2c was a contractor or the subsequent period.

To accomplish our objective, we reviewed 24 Direct Express cardholders' data from January 1, 2018, through September 30, 2019, including any reported errors and related investigations; debit card usage for 2 months prior and 4 months after each error; and communications between the cardholders, Comerica, and Conduent. We conducted our fieldwork from February 2019 through August 2020. After completion of fieldwork, report issuance was delayed due to competing priorities during the Coronavirus Disease 2019 pandemic. Findings and conclusions are based on the original scope period and work performed.

⁹ CFPB was established under Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted on July 21, 2010.

¹⁰ i2c, Inc offers contact center services to customers.

Appendix 1 contains a more detailed description of the audit objectives, scope, and methodology.

Results in Brief

We reviewed all 42 service request (SR) notices¹¹ pertaining to the 24 cardholders¹² who contacted our Office of Investigations between August 28, 2018, and August 22, 2019. For these 42 SR notices we found that Comerica and Conduent were compliant with Regulation E, 12 CFR Section 1005.11(c), *Time limits and extent of investigation*, with one exception. According to this section, a financial institution is required to investigate promptly and determine whether an error occurred within 10 business days of receiving a notice of error. The institution is also required to report the results to the consumer within 3 business days after completing its investigation. The institution should also correct the error within 1 business day after determining that an error occurred. If the institution is unable to complete its investigation within 10 business days, the institution may take up to 45 days from receipt of a notice of error to investigate if, among other things, the institution provisionally credits the consumer's account for the alleged error amount.

Additionally, cardholders should receive a fraud questionnaire¹³ within 3–5 business days of initial oral notification, which is required to be returned within 10 business days of receipt to qualify for provisional credit. We found that, in one case, the cardholder gave oral notification and provided the fraud questionnaire timely; however, Conduent did not close the case until the 11th business day and did not provide a provisional credit to the cardholder. Compliance with Regulation E is critical to the

¹¹ A SR notice is opened by the Conduent Cardholder Disputes Services Team when a cardholder contacts Conduent to report a potential error with a card transaction.

¹² Some cardholders had more than one SR notice.

¹³ Direct Express®MasterCard® Fraud Investigations Policy and Procedures (June 2019) – A “Questionnaire of Fraud” will be sent to the cardholder on day 1 of the case inception for every error transaction dispute case opened. Cardholders should receive the questionnaire within 3-5 business days. This documentation is required in order to assist the Fraud Investigators in determining whether errors occurred, to provide provisional credit, and to submit chargebacks to the merchants who initiated the transactions.

operation of Direct Express. To monitor Comerica and its contractors' compliance with Regulation E, Fiscal Service management should periodically request and review banking regulator¹⁴ compliance reports¹⁵ and follow-up with Comerica on any issues needing improvement.

We recommend that the Commissioner of the Fiscal Service ensures that the FAA for Direct Express Program cardholder services includes adequate provisions to ensure that open SR notices are reviewed timely and that investigations are concluded within 10 business days per Regulation E or that the cardholder receives provisional credit no later than the 10th business day; and as recommended in our July 2019 report, Fiscal Service should use the banking regulator reports to monitor compliance with the FAA and service level requirements (SLRs)¹⁶.

As a separate matter, to improve the customer service experience of Direct Express cardholders, and to mitigate potential violations of Regulation E, we asked Fiscal Service management to address, as appropriate, the observations made during our review as it monitors the Direct Express Program financial agent and its contractors. Specifically, during our review of call recordings, we noted cardholders were not made aware that they should receive a fraud questionnaire within 3–5 business days of their initial call and that the cardholder was required to return the questionnaire within 10 business days of receipt to qualify for provisional credit. Cardholders were also not made aware that the investigations could take up to 90 days to complete and were not always told of

¹⁴ Comerica is supervised and examined by the Federal Reserve Bank of Dallas, the Federal Deposit Insurance Corporation, and the Texas Banking Department.

¹⁵ Banking regulator reports are reports issued by banking regulators based on financial and operational data that banks submit to regulatory authorities to show compliance with applicable laws and regulations. These reports help to identify potential problems that could impact a bank's compliance with laws and regulations or threaten the safety and soundness of the bank, and also ensure that corrective actions are taken as required by law.

¹⁶ Fiscal Service negotiates policies and procedures (e.g., documentation to be maintained by the financial agent, meetings with the financial agent, security, risk management, and expense management) for overseeing a financial agent after the financial agent has been selected and prior to signing the FAA.

alternative methods to return the questionnaire to expedite the process (i.e., fax, email).¹⁷

In a written response, which is included in its entirety in appendix 3, Fiscal Service management concurred with our recommendation. Management noted that more stringent SLRs were included in the most recent FAA with Comerica, dated January 3, 2020, to help ensure that SR notices are reviewed and processed in accordance with Regulation E. Management stated that in future Direct Express FAAs Fiscal Service intends to, subject to the financial agent's agreement, implement measures related to Regulation E compliance, such as (1) increasing the financial agent's expected performance levels for Regulation E compliance-related SLRs; (2) requesting that the proposed financial agent provide the capability to file disputes and track dispute status online and via the mobile app, thereby increasing the efficiency of the process and providing transparency to cardholders; and (3) requiring the financial agent to provide regular aggregate Regulation E compliance reporting data.

With respect to our prior recommendation that Fiscal Service use banking regulator reports to monitor the financial agent's compliance with the FAA and SLRs, management recommitted to requesting banking regulator reports and using any reports that are provided for the purposes of improving the financial agent's performance under the FAA, subject to any conditions imposed by the regulator. Management noted that regulators have the discretion to approve or deny requests for their reports, and that the reports may not help to facilitate either the monitoring of FAA compliance or the assessment of FAA SLRs.

In response to the matters of concern, management noted that Fiscal Service will implement measures such as requiring the financial agent and their respective processor(s) to review call scripts and pre-recorded messages, and perform call monitoring via sampling to ensure operational and regulatory compliance; and that Fiscal Service will review the procedures followed by call center agents to ensure they are communicating the proper information to

¹⁷ The 45-day period discussed above can be extended to 90 days if an electronic funds transfer (1) was not initiated in a state, (2) resulted from a point-of-sale transaction, or (3) occurred within 30 days of the first deposit to the consumer's account.

cardholders regarding the process for disputing unauthorized transactions during annual visits to Direct Express call center(s).

Management's planned corrective actions meet the intent of our recommendation. Fiscal Service management will need to record an estimated completion date for these actions in Treasury's Joint Audit Management Enterprise System. We will perform a corrective action verification audit in the future to assess Fiscal Service's response to our findings and recommendations.

Background

Direct Express

In 2008, Fiscal Service established the Direct Express program to allow beneficiaries to receive federal benefit payments electronically using a prepaid debit card. As of February 2024, approximately 3.6 million individuals receive their social security, veterans, and other benefit payments through the program. Comerica has administered the Direct Express program since the program's inception, after having been selected as financial agent following the initial competitive financial agent selection process in 2008 and again in the subsequent financial agent selection processes in 2014 and 2019.

Regulation E

Regulation E implements the *Electronic Fund Transfer Act*,¹⁸ which establishes a basic framework of the rights, liabilities, and responsibilities of participants in the electronic fund and remittance transfer systems. Rulemaking authority under the Electronic Fund Transfer Act generally transferred from the Federal Reserve Board to CFPB in July 2011. CFPB restated Regulation E at 12 CFR Part 1005 in December 2011.

Regulation E is intended to protect individual consumers engaging in electronic funds transfers and remittance transfers. Electronic funds transfers include, but are not limited to, point-of-sale

¹⁸ Electronic Fund Transfer Act, 15 U.S.C. § 1693 *et seq.*

terminals; mail and telephone order charges; bill payments over the phone or online; and transfers through automated teller machines.

Financial institutions must comply with error resolution procedures outlined in Regulation E, 12 CFR Section 1005.11 if they receive written or oral notice of error within 60 days of a customer being sent a periodic statement on which an error first appears. An institution may require written confirmation of the notice of error within 10 business days of oral notice.¹⁹ For the purpose of this audit, we focused on 12 CFR Section 1005.11(c), *Time limits and extent of investigation*. Our review did not include an in-depth review of other subsections of 12 CFR Section 1005.11.

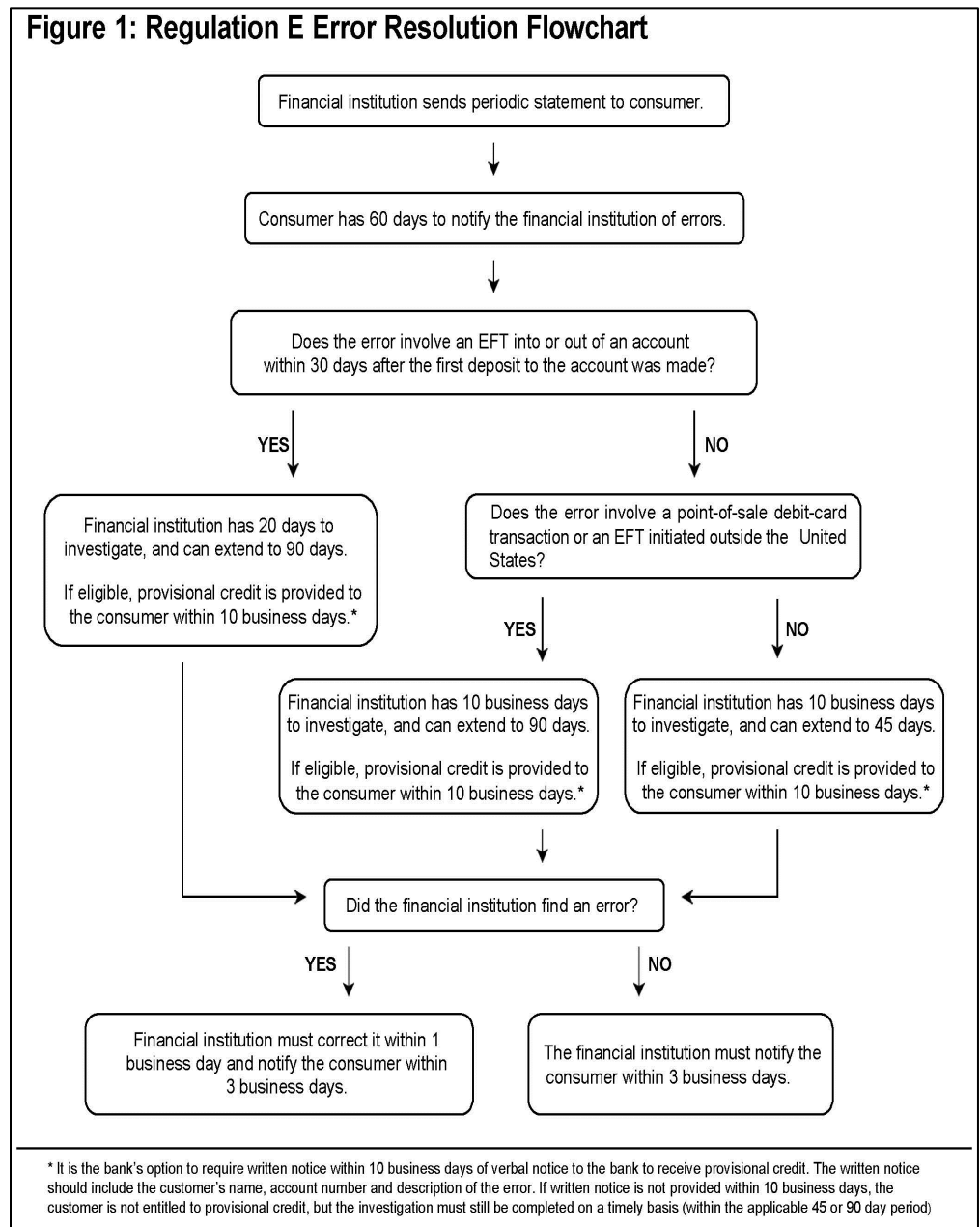
In accordance with Regulation E, financial institutions have 10 business days to investigate and determine whether an error has occurred. While a financial institution may request a written, signed statement from the consumer relating to a notice of error, it may not delay initiating or completing an investigation pending receipt of the statement. As such, the 10 days for the investigation starts with the oral notification. The 10 day period may be extended to 45 days if the institution: (1) provisionally credits the consumer's account for the alleged error amount within 10 business days of receiving the notice of error²⁰; (2) informs the consumer within 2 days after provisional crediting and allows them full use of funds during the investigation; (3) corrects the error, if any, 1 business day after the investigation has reached a determination; and (4) reports the investigation results to the consumer within 3 business days and whether the provisional credit has been made final.

See figure 1 below for the Regulation E Error Resolution Flowchart.

¹⁹ Comerica requires such notice per Section IX (2) of its *Direct Express Card Terms of Use* (August 2019), which states "If the error cannot be resolved over the phone, you must provide us written notice of the error within 10 Business Days at Direct Express®."

²⁰ An institution need not provisionally credit the consumer's account if (1) the institution requires but does not receive written confirmation within 10 business days of an oral notice of error; or (2) the alleged error involves an account that is subject to Regulation T of the Board of Governors of the Federal Reserve System (Securities Credit by Brokers and Dealers, 12 CFR Part 220).

Figure 1: Regulation E Error Resolution Flowchart



Source: OIG created from 12 CFR Section 1005.11(b)(c)

Audit Results

Between August 28, 2018, and August 22, 2019, 33 Direct Express cardholders contacted Treasury OIG's Office of Investigations to report unusual activity on their debit cards. The Office of Investigations told the Office of Audit they were

reviewing information for 3 of the 33 cardholders that made contact. We excluded these three cardholders from our review to avoid duplication of efforts. We contacted the remaining 30 cardholders to notify them that OIG was seeking their financial records. In accordance with the Right to Financial Privacy Act,²¹ which establishes specific procedures that federal government authorities must follow to obtain information from a financial institution about a customer's financial records, we requested that the cardholders provide OIG with their mailing addresses to send the notification letters. Two cardholders did not provide sufficient physical addresses and one cardholder did not respond to multiple messages within the required timeframe. In October 2019, OIG requested requisite information from Comerica for the 27 remaining cardholders. Comerica responded to our request stating that they had no records of error disputes for 3 of the 27 cardholders during our scope period of January 1, 2018, through September 30, 2019. Thus, Comerica provided the data for 24 Direct Express cardholders from January 1, 2018, through September 30, 2019, including any reported errors and related investigations, debit card usage for 2 months prior and 4 months after each reported error, and communications between the cardholders, Comerica, and Conduent. There were 42 SR notices or cases for the 24 cardholders as some cardholders had more than one SR notice.

We reviewed the 42 SR notices and found one case where Comerica/Conduent was noncompliant with one Regulation E requirement, 12 CFR Section 1005.11(c), *Time limits and extent of investigation*. The remaining 41 cases were compliant with 12 CFR Section 1005.11(c). Our review did not include an assessment of the adequacy of the error investigations, nor do we opine on the final determinations made by Comerica/Conduent.

²¹ 12 United States Code § 3403; *Confidentiality of financial records*

Finding

Of the 42 Error Disputes Reviewed, Comerica/Conduent was Noncompliant with 12 CFR Section 1005.11(c), *Time Limits and Extent of Investigation*, In One Case

For one case, a Direct Express cardholder provided the fraud questionnaire timely; however, Conduent did not close the case until the 11th business day and did not provide a provisional credit to the cardholder. According to Regulation E, if a cardholder provides a written affidavit (such as a fraud questionnaire), within 10 business days of oral notice of an error, Conduent, on behalf of Comerica, should complete its investigation of the case within 10 business days of receiving the fraud questionnaire, or provide a provisional credit to the cardholder.

There were 17 of 42 SR notices (40 percent) where cardholders provided written notification within 10 business days of oral notice. Of the 17 cases, we found:

- one case involved non-compliance as discussed above;
- three cases received a timely provisional credit; and
- 13 cases were eligible for a provisional credit; however, the cases were closed within 10 business days and thus, a provisional credit was not necessary.

According to 12 CFR Section 1005.11(c), *Procedures for Resolving Errors, Time limits and extent of investigation*:

- (1) *Ten-day period*. A financial institution shall investigate promptly and, except as otherwise provided, shall determine whether an error occurred within 10 business days of receiving a notice of error. The institution shall report the results to the consumer within 3 business days after completing its investigation. The institution shall correct the error within one business day after determining that an error occurred.
- (2) *Forty-five-day period*. If the institution is unable to complete its investigation within 10 business days, the institution may take up to 45 days from receipt of a notice of error to investigate and determine whether an error occurred,

provided the institution, among other things, provisionally credits the consumer's account in the amount of the alleged error (including interest where applicable) within 10 business days of receiving the error notice.

During a virtual walkthrough of customer accounts with Conduent, we discussed the SR notice that was noncompliant. Conduent personnel acknowledged the Regulation E noncompliance for this case. They explained that the agent investigating the case may have forgotten to change the SR notice status from "open" to "closed" on the 10th business day. Consequently, the case was not noticed until the next business day's daily reporting review.

If Comerica/Conduent does not comply with Regulation E requirements, Direct Express cardholders, many of whom are in vulnerable financial positions and are dependent on monthly benefit payments, may experience added financial distress if needed funds are not received within the required timeframes.

Compliance with Regulation E is critical to the operation of Direct Express. In our 2019 audit report, we noted that Fiscal Service management told us they relied on the banking regulators to review Comerica's compliance with Regulation E as Fiscal Service did not have the legal jurisdiction to do so. In our 2019 report we recommended that Fiscal Service management, under the provisions outlined in 12 CFR Part 261²², periodically request access to the Regulation E compliance reviews related to Direct Express conducted by banking regulators and use the information to monitor the financial agent's compliance with the FAA and SLRs.

Recommendation

We recommend that the Commissioner of the Fiscal Service ensures that the FAA for Direct Express Program cardholder services includes adequate provisions to help ensure that open SR notices are reviewed timely and that investigations are concluded

²² 5 CFR Section 261.1.(a)(3) – *Rules Regarding Availability of Information* (January 1, 2008) the Federal Reserve Board has determined that it is authorized by law to disclose information to a law enforcement or other federal or state government agency that has the authority to request and receive such information in carrying out its own statutory responsibilities, or in response to a valid order of a court of competent jurisdiction or of a duly constituted administrative tribunal.

within 10 business days per Regulation E or that the cardholder receives provisional credit no later than the 10th business day; and as recommended in our July 2019 report, Fiscal Service should use banking regulator reports to monitor compliance with the FAA and service level requirements.

Management Response

Fiscal Service management concurred with the recommendation and stated that more stringent SLRs were included in the most recent FAA with Comerica, dated January 3, 2020, to help ensure that SR notices are reviewed and processed in accordance with Regulation E. For the current Direct Express Financial Agent Selection Process and upcoming negotiations for a new FAA, Fiscal Service intends to, subject to the financial agent's agreement, (1) increase the financial agent's expected performance levels for Regulation E compliance-related SLRs; (2) request that the proposed financial agent provide the capability to file disputes and track dispute status online and via the mobile app, thereby increasing the efficiency of the process and providing transparency to cardholders; and (3) require the financial agent to provide regular aggregate Regulation E compliance reporting data.

With respect to using the banking regulators' reports to monitor Comerica's compliance with the FAA, Fiscal Service management noted that regulators have the discretion to approve or deny requests for their reports, and to impose restrictions on the use and disclosure of any information that they provide. Management also noted and that these reports may not help to facilitate either the monitoring of FAA compliance or the assessment of FAA SLRs, but Fiscal Service recommits to requesting the banking regulator reports and using any reports that are provided for the purpose of improving the financial agent's performance under the FAA, subject to any conditions imposed by the regulator.

OIG Comment

Management's response meets the intent of our recommendation. Management will need to record an estimated completion date for these actions in Treasury's Joint Audit Management Enterprise System. We will perform a corrective action verification audit in the

future to assess Fiscal Service's response to our findings and recommendations.

Other Matters of Concern

We requested from Comerica recordings of the Direct Express cardholders' first calls to Conduent to report the alleged error activity on their debit cards. Comerica told us that the industry standard for retaining call recordings is 90 to 120 days. We also requested Comerica's call recordings retention policy in place during our audit scope period (January 1, 2018, through September 30, 2019). Comerica provided its "formal policy regarding data that is considered to be records and retention requirements" dated September 2019 and stated that there is no regulation regarding the retention of calls nor any formal documentation of the 90 to 120 days industry standard.

Consequently, because some recordings were no longer available, Comerica only provided the initial call recordings for 13 of the 42 SR notices (31 percent). We reviewed these 13 call recordings and noted that at the end of the calls, Conduent transferred cardholders to a pre-recorded, automated message that explained the dispute process. Based on our review of the 13 call recordings, we found that the automated message advised callers of the option to submit a dispute in writing (rather than wait for Conduent's paperwork to arrive) and provided instructions on what to include and where to send the letter. The recording instructed claimants to return all requested documents and paperwork within 10 days of the date of the initial telephone call. However, it did not state that provisional credit may not be given if paperwork was not returned within the required timeframe. Also, the recording did not make it clear that the investigation starts upon the oral notification of error rather than the receipt of written confirmation from the cardholder.

While Comerica/Conduent may request the cardholder's written confirmation of the fraud case either by returning the completed fraud questionnaire or a suitable substitute document, waiting for receipt of pending documentation should not delay the start of the investigation process. According to CFPB's official interpretation, "while a financial institution may request a written, signed statement from the consumer relating to a notice of error, it may

not delay initiating or completing an investigation pending receipt of the statement.” We make note of this as it impacts the timing of the start and completion of an investigation in accordance with Regulation E.

During our review of the calls, we also noted that cardholders were not informed that they would receive the fraud questionnaire within 3–5 business days or that the investigation could take 45–90 calendar days to complete. In addition, Conduent did not consistently inform cardholders of alternative methods, such as fax or email, to return the questionnaire to expedite the process. While Conduent’s call script provided an address and fax number where the fraud questionnaire and other documentation could be sent, the customer service representatives did not always communicate this information.

In our July 2019 report, we made recommendations to improve the Direct Express customer experience and Fiscal Service agreed to use new SLRs in the 2020 FAA²³. The new SLRs were to incentivize Comerica and its contractors to provide excellent service in all areas, including chargeback and dispute processing and customer service representative response times. The matters discussed in this report occurred during the period from January 1, 2018 to September 30, 2019 and the 2015 FAA²⁴ was in place at that time. Because a new FAA has since been put in place with new SLRs, we are not making a new recommendation for these other matters of concern in this report. We will conduct a corrective action verification audit in the future to determine whether customer service recommendations outlined in our 2019 report were implemented by Fiscal Service and follow-up on the matters noted in this report at that time.

To address the issues noted in the Other Matters of Concern section, Fiscal Service management stated that they will implement the following:

- (1) Request the financial agent and its contractor(s) review call scripts and pre-recorded messages and perform call monitoring

²³ FAA between the Bureau of the Fiscal Service U.S. Department of the Treasury and Comerica Bank effective date January 3, 2020.

²⁴ FAA between the Bureau of the Fiscal Service U.S. Department of the Treasury and Comerica Bank effective date January 3, 2015.

via sampling to ensure operational and regulatory compliance; and request that the reviews ensure that cardholders are informed that provisional credit may not be given if paperwork is not returned within the required timeframe and provide alternative methods to submit the paperwork (e.g., mail and fax).

- (2) Request that the financial agent ensure that cardholders are made aware that the financial agent's investigation will begin upon the oral notification of error rather than the receipt of written confirmation from the cardholder and that the investigation could take up to 90 days to complete.
- (3) Review the procedures followed by the Direct Express call center agents, during annual visits, to ensure they are communicating the proper information to cardholders about the process for disputing unauthorized transactions.

* * * * *

We appreciate the courtesies and cooperation extended to our staff during the audit. Major contributors to this report are listed in appendix 4. A distribution list for this report is provided in appendix 5. If you have any questions, please contact me at (202) 997-4491 or Kevin Guishard, Audit Manager, at (202) 270-7040.

Dianna L. Jones /s/
Director, Fiscal Service Audits

Appendix 1: Objectives, Scope, and Methodology

For the 24 cardholders selected for review that contacted our Office of Inspector General Office of Investigations between August 28, 2018 and August 22, 2019 to report unusual activity on their debit cards, the objective of our review was to verify that Comerica Bank (Comerica) and Conduent Incorporated (Conduent), a Comerica subcontractor that manages the Direct Express® Debit MasterCard® program (Direct Express) call center and processes claim disputes, complied with one provision of the *Electronic Fund Transfer* requirements within Regulation E, 12 Code of Federal Regulations (CFR) Section 1005.11 (Regulation E) and review the customer service provided to the cardholders. The focus of this report was to review these specific customer concerns about the timely processing of claim disputes and determine whether the Bureau of the Fiscal Service's (Fiscal Service) oversight of Comerica and its subcontractor's customer service was adequate.

For this audit, we focused on 12 CFR Section 1005.11(c); *Time limits and extent of investigation*. Our review did not include a review of the adequacy of the error investigations, nor do we opine on the final determinations made by Comerica/Conduent. The scope of our audit was from January 1, 2018, through September 30, 2019.

While our mission is to conduct independent audits, investigations and reviews to improve Treasury programs and operations, and prevent and detect fraud and abuse, the Consumer Financial Protection Bureau's (CFPB) mission is to protect consumers from unfair, deceptive, or abusive practices and act against companies that break the law. CFPB was created to provide a single point of accountability for enforcing federal consumer financial laws and protecting consumers in the financial marketplace. As such, we coordinated with CFPB, and they are aware of these Regulation E consumer complaints.

To address our objective, we conducted fieldwork from February 2019 through August 2020. After completion of fieldwork, report issuance was delayed due to competing priorities during the Coronavirus Disease 2019 pandemic. Findings and conclusions are based on the original scope period and work performed. We requested information for, and Comerica provided, 24 Direct Express cardholders' data from January 1, 2018, through

Appendix 1: Objectives, Scope, and Methodology

September 30, 2019, including any reported errors and related investigations, debit card usage for 2 months prior and 4 months after each reported fraud incident, and communications between the cardholders, Comerica, and Conduent. The data yielded 42 service request (SR) notices or cases.

To accomplish our objective, we performed the following procedures:

- Reviewed Federal regulations:
 - 12 CFR Part 1005, Electronic Fund Transfer (Regulation E), and
 - 12 CFR Section 1005.11, *Procedures for Resolving Errors*.
- Reviewed relevant Comerica/Conduent policies and procedures:
 - Direct Express® Debit MasterCard® Fraud Investigations Policy and Procedures Manual (June 2019),
 - Filing a Dispute Procedures (February 2020), and
 - Comerica's Terms of Use for Your Direct Express® Debit MasterCard® Card (August 2019).
- Reviewed cardholder account documentation, including monthly statements; call logs; SR information from Conduent's relevant information technology systems; fraud questionnaires; and Fraud Services Department notification letters.
- Interviewed personnel involved with the dispute process at Conduent.
- Performed virtual walkthroughs, with assistance from Conduent, for the 42 SR notices and related documentation in the Information Technology systems.
- Reviewed recordings of cardholder calls to Conduent customer service representatives.
- We performed the following steps to review cardholder information. Results cannot be extrapolated to the whole population of service notices:

Appendix 1: Objectives, Scope, and Methodology

- Initially selected 33 Direct Express cardholders who directly contacted the Department of the Treasury (Treasury) Office of Inspector General (OIG) Office of Investigations between August 28, 2018, and August 22, 2019, to report unusual activity on their debit cards.
- Excluded three cardholders where Office of Investigations was looking into their cases to avoid duplication of effort.
- Obtained contact information for the cardholders and notified them that Treasury OIG was seeking their financial records from Comerica.
- In accordance with the Right to Financial Privacy Act,²⁵ we requested that the cardholders provide us with their proper mailing addresses to send the notification letters.
- Two cardholders did not provide our office with sufficient physical addresses and one cardholder did not respond to multiple requests within the required timeframe of our audit field work.
- Treasury OIG requested financial information for 27 cardholders from Comerica on October 30, 2019.
- Comerica responded stating that they had no error disputes for three cardholders during our audit scope period (January 1, 2018, through September 30, 2019) and provided data for the remaining 24 cardholders on December 18, 2019.
- We confirmed with our Office of Investigations that there was no additional information in their database regarding the timing of the claims. Additionally, Fiscal Service officials told us that the customer relationship for Direct Express accounts is held by Comerica and, under the Right to Financial Privacy Act, Fiscal Service is prohibited from obtaining customer account information, including information on alleged fraudulent activity from Comerica.

²⁵ The Right to Financial Privacy Act, 12 U.S. Code § 3403 (a), establishes specific procedures that federal government authorities must follow to obtain information from a financial institution about a customer's financial records.

Appendix 1: Objectives, Scope, and Methodology

We assessed the reliability of the customer account data provided by Conduent and Comerica in response to our request by (1) comparing the data received to the data available during walkthroughs of the cases, and (2) interviewing Conduent and Comerica officials knowledgeable about the data. Due to industry standard of retaining call recordings for 90 to 120 days, we were only able to review 13 recordings out of the 42 associated SRs. However, the data available was sufficiently reliable to support the findings and conclusions and answer the objective of this audit.

In addition, we assessed internal control by reviewing Conduent's policies and procedures and conducting walkthroughs of the systems used for management of fraud investigations.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix 2: 12 CFR Section 1005.11 – Procedures for Resolving Errors

12 CFR Section 1005.11 Procedures for resolving errors.

(a) Definition of error:

(1) Types of transfers or inquiries covered. The term “error” means:

(i) An unauthorized electronic fund transfer;

(ii) An incorrect electronic fund transfer to or from the consumer's account;

(iii) The omission of an electronic fund transfer from a periodic statement;

(iv) A computational or bookkeeping error made by the financial institution relating to an electronic fund transfer;

(v) The consumer's receipt of an incorrect amount of money from an electronic terminal;

(vi) An electronic fund transfer not identified in accordance with 12 CFR Section 1005.9 or 12 CFR Section 1005.10(a); or

(vii) The consumer's request for documentation required by 12 CFR Section 1005.9 or 12 CFR Section 1005.10(a) or for additional information or clarification concerning an electronic fund transfer, including a request the consumer makes to determine whether an error exists under paragraphs (a)(1)(i) through (vi) of this section.

(2) Types of inquiries not covered. The term “error” does not include:

(i) A routine inquiry about the consumer's account balance;

(ii) A request for information for tax or other recordkeeping purposes; or

(iii) A request for duplicate copies of documentation.

(b) Notice of error from consumer:

Appendix 2: 12 CFR Section 1005.11 – Procedures for Resolving Errors

(1) Timing; contents. A financial institution shall comply with the requirements of this section with respect to any oral or written notice of error from the consumer that:

(i) Is received by the institution no later than 60 days after the institution sends the periodic statement or provides the passbook documentation, required by 12 CFR Section 1005.9, on which the alleged error is first reflected;

(ii) Enables the institution to identify the consumer's name and account number; and

(iii) Indicates why the consumer believes an error exists and includes to the extent possible the type, date, and amount of the error, except for requests described in paragraph (a)(1)(vii) of this section.

(2) Written confirmation. A financial institution may require the consumer to give written confirmation of an error within 10 business days of an oral notice. An institution that requires written confirmation shall inform the consumer of the requirement and provide the address where confirmation must be sent when the consumer gives the oral notification.

(3) Request for documentation or clarifications. When a notice of error is based on documentation or clarification that the consumer requested under paragraph (a)(1)(vii) of this section, the consumer's notice of error is timely if received by the financial institution no later than 60 days after the institution sends the information requested.

c) Time limits and extent of investigation:

(1) Ten-day period. A financial institution shall investigate promptly and, except as otherwise provided in this paragraph (c), shall determine whether an error occurred within 10 business days of receiving a notice of error. The institution shall report the results to the consumer within 3 business days after completing its investigation. The institution shall correct the error within one business day after determining that an error occurred.

(2) Forty-five-day period. If the financial institution is unable to complete its investigation within 10 business days, the institution

Appendix 2: 12 CFR Section 1005.11 – Procedures for Resolving Errors

may take up to 45 days from receipt of a notice of error to investigate and determine whether an error occurred, provided the institution does the following:

(i) Provisionally credits the consumer's account in the amount of the alleged error (including interest where applicable) within 10 business days of receiving the error notice. If the financial institution has a reasonable basis for believing that an unauthorized electronic fund transfer has occurred and the institution has satisfied the requirements of 12 CFR Section 1005.6(a), the institution may withhold a maximum of \$50 from the amount credited. An institution need not provisionally credit the consumer's account if:

(A) The institution requires but does not receive written confirmation within 10 business days of an oral notice of error; or

(B) The alleged error involves an account that is subject to Regulation T of the Board of Governors of the Federal Reserve System (Securities Credit by Brokers and Dealers, 12 CFR Part 220).

(ii) Informs the consumer, within 2 business days after the provisional crediting, of the amount and date of the provisional crediting and gives the consumer full use of the funds during the investigation;

(iii) Corrects the error, if any, within 1 business day after determining that an error occurred; and

(iv) Reports the results to the consumer within 3 business days after completing its investigation (including, if applicable, notice that a provisional credit has been made final).

(3) Extension of time periods. The time periods in paragraphs (c)(1) and (c)(2) of this section are extended as follows:

(i) The applicable time is 20 business days in place of 10 business days under paragraphs (c)(1) and (2) of this section if the notice of error involves an electronic fund transfer to or from the account within 30 days after the first deposit to the account was made.

Appendix 2: 12 CFR Section 1005.11 – Procedures for Resolving Errors

(ii) The applicable time is 90 days in place of 45 days under paragraph (c)(2) of this section, for completing an investigation, if a notice of error involves an electronic fund transfer that:

(A) Was not initiated within a state;

(B) Resulted from a point-of-sale debit card transaction; or

(C) Occurred within 30 days after the first deposit to the account was made.

(4) Investigation. With the exception of transfers covered by 12 CFR Section 1005.14 of this part, a financial institution's review of its own records regarding an alleged error satisfies the requirements of this section if:

(i) The alleged error concerns a transfer to or from a third party; and

(ii) There is no agreement between the institution and the third party for the type of electronic fund transfer involved.

(d) Procedures if financial institution determines no error or different error occurred. In addition to following the procedures specified in paragraph (c) of this section, the financial institution shall follow the procedures set forth in this paragraph (d) if it determines that no error occurred or that an error occurred in a manner or amount different from that described by the consumer:

(1) Written explanation. The institution's report of the results of its investigation shall include a written explanation of the institution's findings and shall note the consumer's right to request the documents that the institution relied on in making its determination. Upon request, the institution shall promptly provide copies of the documents.

(2) Debiting provisional credit. Upon debiting a provisionally credited amount, the financial institution shall:

(i) Notify the consumer of the date and amount of the debiting;

(ii) Notify the consumer that the institution will honor checks, drafts, or similar instruments payable to third parties and

Appendix 2: 12 CFR Section 1005.11 – Procedures for Resolving Errors

preauthorized transfers from the consumer's account (without charge to the consumer as a result of an overdraft) for 5 business days after the notification. The institution shall honor items as specified in the notice, but need honor only items that it would have paid if the provisionally credited funds had not been debited.

(e) Reassertion of error. A financial institution that has fully complied with the error resolution requirements has no further responsibilities under this section should the consumer later reassert the same error, except in the case of an error asserted by the consumer following receipt of information provided under paragraph (a)(1)(vii) of this section.

Appendix 3: Management Response



DEPARTMENT OF THE TREASURY
BUREAU OF THE FISCAL SERVICE
WASHINGTON, DC 20227

August 19, 2024

Dianna L. Jones
Director, Fiscal Service Audits
Office of Inspector General
Department of the Treasury
Washington, DC 20220

Dear Ms. Jones,

I would like to thank you for the opportunity to respond to the Office of Inspector General's (OIG's) Audit of Direct Express Program Disputes Related to Certain Cardholder Accounts. We have thoroughly reviewed and assessed the observations and the recommendations in the report.

Fiscal Service concurs with the OIG's recommendation subject to the following comments. With regard to Comerica Bank, the current financial agent, we note that more stringent service-level requirements were included in the most recent Financial Agency Agreement (FAA) with Comerica Bank, dated January 3, 2020 ("2020 FAA") to help ensure that service request (SR) notices are reviewed and processed in accordance with Regulation E. Specifically, the expected performance levels for three Regulation E-related service level requirements were increased from 95 percent to 97 percent.¹ Additionally, in the 2020 FAA, a provision was added that requires Comerica to provide Fiscal Service aggregate level reporting on fraud and dispute claims. Consequently, as part of Comerica's monthly reporting package, Fiscal Service now receives aggregate level reporting on fraud and Regulation E disputes. The Fiscal Service team reviews this reporting on a monthly basis to ensure that the financial agent is meeting established performance levels and that fraud rates remain low. In circumstances where fraud rates appear high, service level requirements are not met, or there is an unusually high volume of disputes, Fiscal Service will investigate and take necessary action.

With respect to the recommendation that Fiscal Service should use the banking regulator reports to monitor Comerica's compliance with the FAA and service level requirements, we note that regulators have the discretion to approve or deny requests for their reports, and to impose restrictions on the use and disclosure of any information that they provide. Additionally, to the extent Fiscal Service's requests for regulator reports are approved, it is important to note that the reports may not help to facilitate either the monitoring of FAA compliance or the assessment of FAA service level requirements. We do, however, recommit to requesting banking regulator reports and using any

¹ It is also notable that in the 2020 FAA, SLR compliance was tightened to permit Fiscal Service to financially penalize the financial agent for failing to meet any individual SLR for either three consecutive months or more than three times during any 12-month rolling period. Furthermore, under the 2020 FAA, if the financial agent fails to meet the same SLR twice in a rolling, 12-month period, the financial agent is required upon Fiscal Service's request to provide a corrective action plan to ensure it meets or exceeds the SLR in subsequent months.

Appendix 3: Management Response

reports that are provided for the purpose of improving the financial agent's performance under the FAA, subject to any conditions imposed by the regulator.

In connection with the current Direct Express Financial Agent Selection Process and upcoming negotiations for a new FAA that will govern the Direct Express program beginning in 2025, Fiscal Service also intends to implement the following measures related to Regulation E compliance, subject to the financial agent's agreement:

- Fiscal Service will seek to further increase the financial agent's expected performance levels for Regulation E compliance related SLRs.
- Fiscal Service will request that the proposed financial agent provide the capability to file disputes and track dispute status online and via the mobile app, thereby increasing the efficiency of the process and providing transparency to cardholders.
- Fiscal Service intends to require the financial agent to provide regular aggregate Regulation E compliance reporting data.

Fiscal Service also noted the observations in the Other Matters of Concern section. Fiscal Service will implement the following measures to address the Other Matters of Concern:

- Fiscal Service will request the financial agent and its contractor(s) review call scripts and pre-recorded messages and perform call monitoring via sampling to ensure operational and regulatory compliance. Fiscal Service will request that these reviews specifically ensure that cardholders are informed that provisional credit may not be given if paperwork is not returned within the required timeframe and that there are alternative methods to submit the paperwork (e.g., mail and fax). Fiscal Service will also request that the financial agent ensure that cardholders are made aware that the financial agent's investigation will begin upon the oral notification of error rather than the receipt of written confirmation from the cardholder and that the investigation could take up to 90 days to complete.
- In its annual visit to the Direct Express call center(s), Fiscal Service will review the procedures followed by call center agents to ensure they are communicating the proper information to cardholders regarding the process for disputing unauthorized transactions.

We appreciate your recommendation and the opportunity to respond.

Sincerely,



Timothy E. Gribben
Commissioner

Appendix 4: Major Contributors to This Report

Kevin Guishard, Audit Manager
Kirk Solomon, Auditor
Mary Maloba, Referencer
Clare Granville, Referencer

Appendix 5: Report Distribution

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