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United States Senate

SPECIAL COMMITTEE ON AGING

WASHINGTON, DC 20510-6400

(202) 224-5364

July 13, 2015

VIA ELECTRONIC MAIL &
FIRST CLASS MAIL

The Honorable Jacob Lew
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Lew:

The United States Senate Special Committee on Aging (the "Committee") is conducting oversight of the United States Department of the Treasury's ("Treasury") administration of the Direct Express Program through which certain Americans receive federal benefits via a prepaid debit card.

The Committee has long expressed concern regarding the manner in which Comerica Incorporated and Comerica Bank's ("Comerica") original, amended, and re-bid Direct Express Contracts were awarded. To conduct appropriate oversight in light of this concern, the Committee has long sought documents concerning the bidding process and administration of the Direct Express Program. The Committee's concerns are shared by the Department of the Treasury's Inspector General. Unfortunately, the current record suggests that Treasury has not been fully cooperative with the Committee's efforts to obtain documents relating to the Direct Express Program.

On February 29, 2013, the Committee requested from Treasury documents that would include any contracts between your agency and Comerica for the Direct Express Program. On March 14, 2013, Treasury produced, among other things, a contract with Comerica for the Direct Express Program dated January 3, 2008. Nothing in this letter suggested that Treasury's production was incomplete. After this production, the Committee's investigation revealed that the January 3, 2008, contract with Comerica had been amended on December 28, 2008, and March 31, 2011. The Committee wrote Treasury on May 28, 2013, requesting the amendments noting "[i]t appears that both of these documents should have been produced on March 14, 2013, and [the Committee is] . . . disappointed that Treasury did not fully disclose all contractual agreements when supplying the information the Committee requested." On June 11, 2013, Treasury produced these amendments to the Committee. The only rationale offered by Treasury for failing to produce these documents in response to the February 2013 Document Request was that "Treasury staff collected a large volume of material related to the original request, and the two amendments to the original FAA were inadvertently omitted from the March 14 response."

The May 2013 Document Request also sought “documents justifying . . . [t]he amendments or contract modifications.” It has been more than *two years* since this request was made, but *nothing* has been produced in response to this portion of the May 2013 Document Request.

On December 9, 2014, after Treasury awarded a new Direct Express contract to Comerica, the Committee requested that the agency produce: (1) “unredacted copies of the new Financial Agency Agreement with Comerica Bank”; (2) “any subsequent modifications or amendments”; (3) “any related documents justifying why Comerica was chosen”; (4) “any written proposals the bank made”; and (5) “any documents evaluating the bids for the Direct Express contract.” On February 4, 2015—six weeks after the Committee’s deadline—Treasury sent the Committee a letter claiming the agency was “in the process of compiling materials responsive to your request.” To date, Treasury has not produced a single document responsive to the December 2014 Document Request.

On March 16, 2015, Treasury informed Committee Staff that Treasury was in the process of finalizing a response, but that Treasury would not produce the documents to the Committee—they would only be made available for *in camera* review. The leading rationale assigned for Treasury’s refusal to produce the documents was a concern over sharing Comerica’s sensitive business information.

Committee Staff subsequently spoke to the Senior Vice President and General Counsel responsible for regulatory affairs at Comerica. He informed the Committee that Comerica had never made a request for confidentiality to Treasury as to congressional requests. He represented that Comerica understood that Congress was entitled to all information surrounding the Direct Express contracts and stated that Comerica had no objection to its production.

On May 5, 2015, the Committee conducted an *in camera* review of documents provided by Treasury. Treasury stated that this *in camera* document review set was responsive to the December 2014 Document Request. Accordingly, Treasury has not, to our knowledge, offered even *in camera* review of documents responsive to the outstanding portion of the May 2013 Document Request. The *in camera* review raised serious concerns. Below, we explain some of our concerns:

- Treasury was unable to provide Committee Staff with any information regarding how the *in camera* document review set was put together.
- Treasury made available for *in camera* review 220 pages of documents (including cover pages). This is not the substantial *in camera* document review set the Committee expected in light of the time Treasury took to gather (and presumably review) the *in camera* document review set. More fundamentally, the *in camera* document review set was demonstrably incomplete in several respects:
 - The *in camera* document set did not contain a single document that was responsive to the portion of the December 2014 Document Request which sought “any written proposals . . . [Comerica] made,” regarding Bureau of the Fiscal Service, United

States Department of the Treasury, *Requirements for Statements of Qualifications and Applications to Provide Prepaid Debit Card Services* (Jan. 2–3, 2014).

- The *in camera* document review set contained but two documents responsive to the portion of the December 2014 Document Request which sought “any related documents justifying why Comerica was chosen” for the 2014 Direct Express re-bid and “any documents evaluating the bids for the [2014 re-bid of the] Direct Express contract.” These two documents were *post*-decisional. (For example, an August 2014 evaluation of bids—*i.e.*, a document written two months after the agency purportedly reached a decision to award the contract to Comerica.).
- The *in camera* document review set appears to contain only final documents—it seems to contain no drafts.
- The *in camera* document review set included no emails.
- Numerous documents in the *in camera* document review set were redacted. Most troubling, Treasury redacted several documents in the *in camera* document review set, including those, such as the original Comerica Direct Express Contract, that it already provided to the Committee in unredacted format.

To date, the Committee has not received documents and/or data responsive to the outstanding requests. Treasury’s failure to produce these documents—some of which the Committee requested more than two years ago—is hindering the Committee’s ability to conduct legitimate bipartisan oversight. Treasury stated it has completed the process of preparing a production of documents responsive to the December 2014 Document Request. Treasury is apparently withholding these documents—which it admits are responsive to the December 2014 Document Request (and the *in camera* review reveals they are responsive)—under a vague oral claim that they contain Comerica’s business sensitive information. We expect that Treasury will produce all documents responsive to the outstanding specifications of the May 2013 and December 2014 Document Requests, or will formally state—in writing—an objection to their production based upon a privilege or protection, and log that claim of privilege or protection pursuant to the attached Production Instructions.

We restate the outstanding specifications in Schedule A. Please produce all responsive documents or assert a formal written claim of privilege or protection over these documents by July 27, 2015. Additionally, we have received information which suggests that additional materials would aid us in better understanding the Direct Express Program. Accordingly, please provide the documents in Schedule B by August 24, 2015 and answers to the questions in Schedule C by August 24, 2015.

We appreciate your attention to this matter. Should you have any questions, please do not hesitate to have your staff contact Samuel Dewey of the Majority Staff at (202) 224-2798, or Joel Eskovitz of the Minority Staff at (202) 224-3505. Please direct all official correspondence to the Committee's Chief Clerk, Matt Lawrence, at Matt_Lawrence@aging.senate.gov.

Sincerely,



Susan M. Collins
Chairman
U.S. Senate Special Committee on Aging



Claire McCaskill
Ranking Member
U.S. Senate Special Committee on Aging

The Honorable Jacob Lew
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Schedule A

1. The 2014 Financial Agency Agreement between Comerica and Treasury governing the Direct Express Program, and subsequent modifications, amendments, task orders, or other similar documents thereto.
2. Any modifications, amendment, task orders, or other similar documents thereto, made to the 2014 Financial Agency Agreement between Comerica and Treasury governing the Direct Express Program.
3. Any documents justifying why Comerica was chosen for the 2014 Financial Agency Agreement between Comerica and Treasury governing the Direct Express Program.
4. Any written proposals by Comerica relating to the Bureau of the Fiscal Service, United States Department of the Treasury, *Requirements for Statements of Qualifications and Applications to Provide Prepaid Debit Card Services* (Jan. 2–3, 2014).
5. Any documents, evaluating, any documents communicated to Treasury that in any way relate to the Bureau of the Fiscal Service, United States Department of the Treasury, *Requirements for Statements of Qualifications and Applications to Provide Prepaid Debit Card Services* (Jan. 2–3, 2014).
6. Any documents justifying *Amendment No. 1 to Financial Agency Agreement Between the Financial Management Service U.S. Department of the Treasury and Comerica Bank* (Dec. 22, 2008) and *Amendment No. 2 to Financial Agency Agreement Between the Financial Management Service U.S. Department of the Treasury* (Mar. 31, 2011).

Schedule B

1. Any communications with Comerica, relating to the 2014 Financial Agency Agreement between Comerica and Treasury governing the Direct Express Program and any subsequent modifications, amendments, task orders, or other similar documents thereto.
2. Any communications with Comerica, relating to *Direct Express® Debit Card Services for Federal Benefit Recipients, Financial Agency Agreement Between the Financial Management Service U.S. Department of the Treasury and Comerica Bank* (Jan. 3, 2008) and any subsequent modifications, amendments, task orders, or other similar documents thereto, including, but not limited to, *Amendment No. 1 to Financial Agency Agreement Between the Financial Management Service U.S. Department of the Treasury and Comerica Bank* (Dec. 22, 2008) and *Amendment No. 2 to Financial Agency Agreement Between the Financial Management Service U.S. Department of the Treasury* (Mar. 31, 2011).
3. Any communications with Comerica relating to the Letter from the Hon. Bill Nelson et al. to the Hon. Jacob J. Lew (Dec. 9, 2014), the Letter from the Hon. Bill Nelson to the Hon. Jacob Lew (May 28, 2013), or the Letter from the Hon. Bill Nelson, et al. to the Hon. Neal S. Wolin, et al. (Feb. 28, 2013).
4. Any contracts and any subsequent modifications, amendments, task orders, or other similar documents thereto, not produced in response to Schedule A that concern both Comerica and the Direct Express Program.
5. Any documents relating to any evaluation of Comerica relating to any Direct Express Contract, including, but not limited to, Comerica's compliance with contractual performance metrics and contractual certification requirements.
6. Any documents relating to Bureau of the Fiscal Service, United States Department of the Treasury, *Requirements for Statements of Qualifications and Applications to Provide Prepaid Debit Card Services* (Jan. 2–3, 2014); *excepting* those documents responsive to Schedule A herein.
7. Any documents notating, memorializing, or summarizing a communication, or a portion thereof, responsive to Specifications 1–3 of Schedule B herein.

Schedule C

1. Identify each Treasury employee who, at any time, was or is an employee of Comerica from 2007–present. For each person so identified, state the date on which they commenced and (if applicable) concluded service for each discrete position held within the Treasury and Comerica respectively.
2. Identify any contracts (and subsequent modifications, amendments, task orders, or other similar documents thereto) for which Comerica currently acts as a financial agent for Treasury. For each contract so identified: (1) state the full title of the contract; (2) state the effective date; (3) state the total possible contract value; and (4) identify with particularity the subject matter of the contract.
3. For each discrete communication that did not occur via document, but which would have been responsive to Specifications 1–3, 5, and 6 of Schedule A and Specifications 1–7 in Schedule B if made via document, state:
 - (a) The method of communication.
 - (b) The date and time of the communication.
 - (c) The author and addressee of the communication.
 - (d) The relationship of the author and addressee to each other.
 - (e) A general description of the communication.

Information responsive to this question should be produced in a native Excel file.