

# United States Senate

Washington, DC 20510-1304

October 3, 2011

Brian T. Moynihan, Chief Executive Officer  
Bank of America Corporation  
100 N. Tryon St.  
Charlotte, NC 28255

Dear Mr. Moynihan:

On September 29 it was reported that Bank of America would begin charging its customers a \$5 monthly fee for the use of a debit card. In other words, your bank has decided to impose a significant new fee on loyal customers who simply want to access their own deposited money through a card that your bank gave them and encouraged them to rely on. I challenge you to provide specific and credible data that justifies imposing this monthly card fee. If you cannot provide such data, I challenge you to do the right thing for your customers and reconsider your decision. Based on the data I have seen, your decision to charge this new fee cannot be justified by any reasonable measure.

First, there is no evidence that your bank could not continue to offer debit cards profitably just with the revenue you will receive under the generous maximum interchange fee rates that the Federal Reserve has established. The Fed found that it costs a bank on average around 7 cents to conduct a debit transaction, and likely far less for a bank with your economies of scale. Under the Fed's rule you will be allowed to profit handsomely by collecting around 24 cents per transaction. Your decision to charge a new monthly debit fee is an overt attempt to make even more profit off the backs of your customers.

Second, I am aware that you and your industry seek to blame swipe fee reform, which I drafted and Congress enacted, for your decision to raise fees on your customers. However, this justification does not add up. According to industry analysts your bank has 38.7 million debit cardholders. Assuming that these cardholders remain your customers and pay your new \$5 dollar fee, Bank of America will make an estimated \$2.32 billion annually from this fee – on top of the enormous profit it will already receive under the Fed's swipe fee rates. Yet you recently claimed in an SEC filing that the revenue impact of swipe fee reform on your bank would be significantly less than \$2.32 billion - even if the Fed had set a 12 cent cap rather than the 24 cent cap they established. It appears that your new fee will result in another windfall for your bank with swipe fee reform as an excuse. I challenge you to prove otherwise.

The American people deserve to know the real story about the swipe fee system and the way big banks have colluded to profit excessively at the expense of our nation's businesses and consumers. Debit and credit card swipe fees generate billions for your bank each year. But you did not earn these fees by bettering your competitors in a free market, which is how Main Street businesses have to make their money. Rather, you earned these billions because the Visa and MasterCard duopoly fixed the same high swipe fee rates for your bank that they did for every

other bank, thereby immunizing this revenue stream from competitive pressures that would hold fees at a reasonable level. Now that the truth about the anti-competitive swipe fee system has been exposed and the process of reform has begun, banks like yours are desperately looking to keep the money flowing like it did in the past. And as your new fee demonstrates, you are now looking for ways to make even more lucrative profits off of debit cards than you did before. I do not think your customers will be fooled by this.

Analysts have noted that the real rationale behind your new debit fee is likely not to cover debit processing costs (which are minimal and easily covered by the Fed's generous rule) but rather to push more consumers to use credit cards whose swipe fees are still unregulated and far exceed debit swipe fees. But here competition will help provide an important check. When drafting my legislation I anticipated that banks would push consumers toward credit cards so I included a provision allowing merchants to offer discounts for debit versus credit. This provision will help consumers at the cash register and also will constrain your and other big banks' efforts to steer customers toward credit cards with all their attendant tricks and traps.

Your bank's spokespeople and advocates have argued strenuously that I am responsible for your decision to charge this new fee on all but your wealthiest customers. In response to this I will simply point out that my legislation was enacted in July 2010. In June 2010, the Wall Street Journal reported that your bank was "preparing new fees on basic banking services" for 2011 and that "Bank of America customers who only want a low-volume checking account will likely be asked to pay for it." (*End is Seen to Free Checking* The Wall Street Journal, June 16, 2010). In other words, it is on the record that your bank was preparing new fees just like this one well before swipe fee reform became law.

Swipe fee reform is merely your latest excuse for jacking up consumer fees, just like the "troubled economy" was your excuse in 2008 (*Banks Boost Customer Fees to Record Highs* The Wall Street Journal, November 12, 2008), "higher costs and consumers' increased riskiness" was your excuse in 2009 (*Banks find ways to boost fees; checking accounts latest target* USA Today, May 28, 2009), and "overdraft restrictions" was your excuse in 2010 (*Banks return to charging credit card, checking account fees* USA Today, May 18, 2010). Your bank has never been shy about seeking more fee revenue to add to the revenue you already receive from maintenance fees, ATM fees, overdraft fees, extended overdrawn balance fees, stop payment fees, interchange fees, "research fees" and other fees – not to mention the interest you receive from lending out consumer deposits. But banks do not need to gouge their customers to operate successfully. Banks instead must choose whether their priority will be their customers or their profits and paychecks. You could, for example, choose to give 1.8 million of your customers a reprieve from your new fee by returning the \$9 million bonus you received on top of your \$950,000 salary in 2010. That choice is yours to make.

In conclusion, I know that every bank in America would like to keep the old swipe fee system just like it was. But our nation's banks need to learn how to serve customers well in a competitive and transparent market environment. For years Wall Street and the big banks have been playing by a different set of rules than Main Street, and it is time for that to stop.

Sincerely,



Richard J. Durbin  
United States Senator