Levin	Nelson (FL)	Specter
Lieberman	Pryor	Stabenow
Lincoln	Reed	Tester
Lugar	Reid	Thune
McCain	Risch	Udall (CO)
McCaskill	Roberts	Udall (NM)
McConnell	Rockefeller	Vitter
Menendez	Sanders	Voinovich
Merkley	Schumer	Warner
Mikulski	Sessions	Webb
Murkowski	Shaheen	Whitehouse
Murray	Shelby	Wicker
Nelson (NE)	Snowe	Wyden

NAYS—1

Coburn

NOT VOTING—3

Bennett	Byrd	Kerry

The nomination was confirmed.

NOMINATION OF DENZIL PRICE MARSHALL, JR.

The PRESIDING OFFICER. There will now be 2 minutes of debate equally divided on the nomination of Denzil Price Marshall Jr., of Arkansas, to be United States District Judge for the Eastern District of Arkansas.

The Senator from Arkansas.

Mrs. LINCOLN. Mr. President, I am so pleased to rise in support of Judge Price Marshall who has been nominated to fill the Federal judicial vacancy in the Eastern District of Arkansas.

Judge Marshall has enjoyed an impressive and lengthy legal career in Arkansas, where he has served as a judge on the Arkansas Court of Appeals since 2006.

Previously, Judge Marshall practiced law in his hometown of Jonesboro, for 15 years, as a principal at the firm Barrett & Deacon. He also clerked for U.S. Circuit Judge Richard Arnold from 1989 to 1991.

He graduated from Arkansas State University in Jonesboro in 1985, where he currently serves as an adjunct professor of political science.

Judge Marshall also received a degree from the London School of Economics, and graduated with honors from Harvard Law School in 1989.

He has done a tremendous job. He is very well known in Arkansas as a gifted appellate advocate, brilliant legal mind, and well-respected man of integrity. I am so pleased the Senate is taking the role of moving him forward in this capacity. I thank Chairman LEAHY and the Judiciary Committee for moving the nomination forward. I have full faith and confidence in Judge Marshall's ability and encourage Members to support him.

I yield to my colleague from Arkansas.

Mr. PRYOR. Mr. President, I don't think it is an exaggeration to say that when our Founding Fathers laid out article III of the Constitution, they had people such as Price Marshall in mind. He is smart. He is hard-working. He is a family man. He is involved in his community. He is involved in his church and in his legal profession. He is an elected member of the Arkansas Court of Appeals. When he was in private practice, he had a reputation as a lawyer's lawyer. I join Senator LINCOLN in giving him my highest recommendation.

I appreciate all my colleagues voting yes on Price Marshall.

The PRESIDING OFFICER. All time is yielded back.

The question is, Will the Senate advise and consent to the nomination of Denzil Price Marshall, Jr., of Arkansas, to be United States District Judge for the Eastern District of Arkansas?

The nomination was confirmed.

The motion to reconsider is considered as made and tabled.

The President shall be notified of the Senate's action.

● Mr. KERRY. Mr. President, I was necessarily absent for the votes on the nomination of Nancy D. Freudenthal to be U.S. District Judge for the District of Wyoming and Denzil Price Marshall Jr. to be U.S. District Judge for the Eastern District of Arkansas. If I were able to attend today's session, I would have supported both nominees.●

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010—Continued

AMENDMENT NO. 3737

The PRESIDING OFFICER. There is now 4 minutes of debate equally divided prior to a vote on the Boxer amendment.

The Senator from California.

Mrs. BOXER. Mr. President, I would like everyone to take a look at these headlines from September 2008: ''Nightmare on Wall Street, Where Do We Go From Here?'' All of us who went through this, whether we were in the Senate or we were looking at what was happening to our investments on Wall Street, we saw over 3 short days in September of 2008, Lehman Brothers, Merrill Lynch, and AIG collapsed and the stock market plunged. Seniors lost their retirement savings, and families lost their jobs and homes. Small businesses stopped hiring. It was a nightmare. That is what it was. If there is one thing we should all be able to agree on, it is this: The American taxpayer should never again have to bail out Wall Street firms that gambled away our savings and wreaked havoc on our economy.

My amendment is very clear. It is not a sense of the Senate. It has the force of law. It is straightforward. It is an ironclad assurance that a failing, insolvent Wall Street firm must be liquidated, and the cost of that liquidation must come either from selling off the firm's assets or from industry assessments of the big Wall Street firms.

I will retain the remainder of my time in case there is a debate. I hope this is close to a unanimous vote. It is clear, and I hope we will agree.

I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, I yield back the time and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The question is on agreeing to the amendment.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that if present and voting, the Senator from Massachusetts (Mr. KERRY would vote ''yea.''

Mr. KYL. The following Senator is necessarily absent: the Senator from Utah (Mr. BENNETT).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 1, as follows:

[Rollcall Vote No. 130 Leg.]

YEAS—96

Akaka	Ensign	Menendez
Alexander	Enzi	Merkley
Barrasso	Feingold	Mikulski
Baucus	Feinstein	Murkowski
Bayh	Franken	Murray
Begich	Gillibrand	Nelson (NE)
Bennet	Graham	Nelson (FL)
Bingaman	Grassley	Pryor
Bond	Gregg	Reed
Boxer	Hagan	Reid
Brown (MA)	Harkin	Risch
Brown (OH)	Hatch	Roberts
Brownback	Hutchison	Rockefeller
Bunning	Inhofe	Sanders
Burr	Inouye	Schumer
Burris	Isakson	Sessions
Cantwell	Johanns	Shaheen
Cardin	Johnson	Shelby
Carper	Kaufman	Snowe
Casey	Klobuchar	Specter
Chambliss	Kohl	Stabenow
Coburn	Landrieu	Tester
Cochran	Lautenberg	Thune
Collins	Leahy	Udall (CO)
Conrad	LeMieux	Udall (NM)
Corker	Levin	Vitter
Cornyn	Lieberman	Voinovich
Crapo	Lincoln	Warner
DeMint	Lugar	Webb
Dodd	McCain	Whitehouse
Dorgan	McCaskill	Wicker
Durbin	McConnell	Wyden

NAYS—1

Kyl

NOT VOTING—3

Bennett	Byrd	Kerry

The amendment (No. 3737) was agreed to.

Mr. DODD. I move to reconsider the vote.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Alabama.

AMENDMENT NO. 3827 TO AMENDMENT NO. 3739

Mr. SHELBY. Mr. President, I call up my amendment, which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Alabama [Mr. SHELBY], for himself and Mr. DODD, proposes an amendment numbered 3827 to amendment No. 3739.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The PRESIDING OFFICER. There will be 4 minutes of debate, evenly divided, on the amendment.

The Senator from Alabama.

Mr. SHELBY. Mr. President, I yield back my time. I think we have debated this quite a while this afternoon. Most people know about it.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, again, I thank my colleagues. I thank Senator CORKER, Senator WARNER, and Senator SHELBY. A lot of work went into this amendment. I urge my colleagues to support it.

I yield back our time and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Utah (Mr. BENNETT).

The PRESIDING OFFICER (Mr. FRANKEN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 93, nays 5, as follows:

[Rollcall Vote No. 131 Leg.]

YEAS—93

Akaka	Feinstein	Merkley
Alexander	Franken	Mikulski
Barrasso	Gillibrand	Murkowski
Baucus	Graham	Murray
Bayh	Grassley	Nelson (NE)
Begich	Gregg	Nelson (FL)
Bennet	Hagan	Pryor
Bingaman	Harkin	Reed
Bond	Hutchison	Reid
Boxer	Inhofe	Risch
Brown (MA)	Inouye	Roberts
Brown (OH)	Isakson	Rockefeller
Brownback	Johanns	Sanders
Bunning	Johnson	Schumer
Burr	Kaufman	Sessions
Burris	Kerry	Shaheen
Cantwell	Klobuchar	Shelby
Cardin	Kohl	Snowe
Carper	Kyl	Specter
Casey	Landrieu	Stabenow
Chambliss	Lautenberg	Tester
Cochran	Leahy	Thune
Collins	LeMieux	Udall (CO)
Conrad	Levin	Udall (NM)
Corker	Lieberman	Vitter
Crapo	Lincoln	Voinovich
Dodd	Lugar	Warner
Durbin	McCain	Webb
Ensign	McCaskill	Whitehouse
Enzi	McConnell	Wicker
Feingold	Menendez	Wyden

NAYS—5

Coburn	DeMint	Hatch
Cornyn	Dorgan	

NOT VOTING—2

Bennett	Byrd

The amendment (No. 3827) was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote.

Mr. SHELBY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENTS NOS. 3755 AND 3757, EN BLOC

The PRESIDING OFFICER. The Senate will now vote on the two Snowe amendments en bloc.

If there is no further debate on the amendments, the question is on agreeing to the amendments en bloc.

The amendments (Nos. 3755 and 3757) were agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote.

Mr. SHELBY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

AMENDMENT NO. 3826 TO AMENDMENT NO. 3739

Mr. SHELBY. Mr. President, I rise to bring up amendment No. 3826, the Republican consumer protection alternative. This amendment has been cosponsored by 14 of my colleagues. It is amendment No. 3826.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Alabama [Mr. SHELBY], for himself, Mr. MCCONNELL, Mr. BENNETT, Mr. CRAPO, Mr. CORKER, Mr. JOHANNS, Mrs. HUTCHISON, Mr. VITTER, Mr. BUNNING, Mr. CHAMBLISS, Mr. CORNYN, Mr. BOND, and Mr. ENZI, proposes an amendment numbered 3826 to amendment No. 3739.

Mr. SHELBY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, before they begin debate on the next amendment, I thank my colleagues. This has been a difficult time even getting to this point. I thank Senator SHELBY and his staff and my staff and others. We have had a vote on the Boxer amendment, 96 to 1. We had a vote, 93 to 5, on the Shelby-Dodd amendment. We adopted two Snowe amendments in the last hour. That is a pretty good beginning on this bill.

I want to tell my colleagues I have received about 95 amendments to the bill that people will propose. I believe Members ought to be able to be heard on their amendments. This is something that will have to be self-imposed discipline, to some degree, but if Members will restrain themselves on time, more colleagues will get a chance to be a part of the bill and to be heard. If you ask for too much time, it will make it difficult. I just ask people to be considerate of each other. Most times, an amendment can be made—a big amendment—with an hour or two of debate and others less than that, maybe 20 minutes or 30 minutes equally divided. Again, I am not suggesting some amendments are more important than others. If you bring the amendments to us for review, perhaps we can adopt some or make them part of a managers' amendment. We will both have to check them out. If we can do that, we can reduce the number significantly. I think we have some smart proposals. I cannot do that alone. My colleague will have to agree with that.

It would help us a great deal if we can move this along, and I say that respectfully. I don't know whether we have an agreement on when we might vote on this amendment. I will ask my colleague to give us some idea. I would like you to think about how much time you would like, and keep in mind your fellow colleagues who would like to be heard on their amendments.

Mr. DORGAN. Will the Senator yield for a question?

Mr. DODD. Yes, I am glad to yield.

Mr. DORGAN. I think it is commendable that there has been a burst of activity on the Senate floor in the last couple of hours. We have had a number of votes. It took some while to wait for this to happen. I agree with the Senator from Connecticut and the Senator from Alabama that to the extent we can accommodate votes on a wide range of subjects—this is an issue that is very consequential to the future of the country, and we want to get it right.

From my standpoint, I have a couple of amendments I think are very important. Time agreements are not a problem for me. I am interested in having the opportunity to explain an amendment and have a short debate and then have the Senate register its judgment. I appreciate what the Senator just said. He would like to see us move along and be able to offer amendments. There are a lot of them on too big to fail and credit default swaps. I will talk to the managers. I hope I will have an opportunity to get them on the floor and get them offered.

Mr. DODD. I hope we can stay away from filibusters and get everybody to have an up-or-down vote. This is a very important bill, and it is also about how this institution functions and whether we trust each other to be able to offer an amendment, have an adequate amount of time to debate, and then vote up or down. That is how we ought to function.

I hope this bill will not only produce a good product in the end but will also have the healing quality this institution needs. We have been through a lot in this Congress. We need to get back to acting like colleagues, respecting each other's opinions, having a good partisan debate but doing it in a civil fashion, having the consideration each person deserves to be heard, and having a vote up or down. I offer that as a suggestion on how we might proceed.

Mr. SANDERS. If the Senator will yield, do we have any sense of what is happening this afternoon?

Mr. DODD. I will find out from my colleague.

Mr. SHELBY. Mr. President, I join my colleague from Connecticut. We have had a burst of activity this afternoon. I think we are off to a good start. We have to remember that this bill is

about 1,500 pages. This doesn't only affect a little bit of our economy, it affects all of our economy in one way or the other.

I have just laid down an amendment—the Republican alternative to the consumer products—and a lot of people are going to want to debate it on both sides. We are not here to delay this bill in any way. I think it is so important and it is so comprehensive that we are going to have a healthy debate. I appreciate the remarks of the Senator from Connecticut. I believe he understands that very well.

Mr. DODD. My colleague from Montana wishes to speak.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. TESTER. Mr. President, I inquire of Senator DODD, at this point in time, does he want me call up my amendment No. 3749 or just talk about it?

Mr. SHELBY. The Senator can call it up.

Mr. DODD. My friend can call up his amendment.

AMENDMENT NO. 3749 TO AMENDMENT NO. 3739

Mr. TESTER. Mr. President, I ask unanimous consent to set aside the pending amendment, and I call up amendment No. 3749.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from Montana [Mr. TESTER], for himself, Mr. CONRAD, Mrs. MURRAY, and Mr. BURRIS, proposes an amendment numbered 3749 to amendment No. 3739.

Mr. TESTER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To require the Corporation to amend the definition of the term ''assessment base'')

On page 368, strike line 3 and all that follows through page 369, line 14, and insert the following:

(b) ASSESSMENT BASE.—The Corporation shall amend the regulations issued by the Corporation under section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)) to define the term ''assessment base'' with respect to an insured depository institution for purposes of that section 7(b)(2), as an amount equal to—

(1) the average consolidated total assets of the insured depository institution during the assessment period; minus

(2) the sum of—

(A) the average tangible equity of the insured depository institution during the assessment period; and

(B) in the case of an insured depository institution that is a custodial bank (as defined by the Corporation, based on factors including the percentage of total revenues generated by custodial businesses and the level of assets under custody) or a banker's bank (as that term is used in section 5136 of the Revised Statutes (12 U.S.C. 24)), an amount that the Corporation determines is necessary to establish assessments consistent with the definition under section 7(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)) for a custodial bank or a banker's bank.

Mr. TESTER. Mr. President, I rise to urge my colleagues to support the Tester-Hutchison amendment. My colleague from Texas and I came to the floor yesterday to talk about this bipartisan, commonsense amendment to hold banks accountable for their behavior and to preserve the integrity of the FDIC deposit insurance fund.

Our amendment would force big banks to pay their fair share of insurance by basing assessments on assets rather than deposits. It would fix the lopsided assessment system that we have now, which unfairly burdens our community banks. It would ensure that the FDIC has the necessary resources to maintain the health of the deposit insurance fund.

Senator HUTCHISON and I think this amendment makes a good deal of common sense. I am pleased this is one of the first amendments up for consideration because it highlights the fact that Democrats and Republicans do agree on ways we can strengthen what is already a very good bill. Senator HUTCHISON and I are joined by Senators CONRAD, MURRAY, BURRIS, BROWN of Massachusetts, HARKIN, SHAHEEN, CORNYN, JOHANNS, NELSON of Florida, and NELSON of Nebraska in offering this important bipartisan amendment.

After working on this bill for months with the good Senator DODD and the Banking Committee, I am pleased we are finally getting an opportunity to debate this bill and move it forward.

I know there are a number of other bipartisan amendments like this one where Members can join together to work to improve this bill. I look forward to considering them also.

With that, when the time is right, when leadership has agreed, I hope we can get a vote on amendment No. 3749.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. DORGAN. Mr. President, before the Senator from Rhode Island speaks, let me just ask if he will yield so that I may ask a question.

Mr. WHITEHOUSE. Yes.

Mr. DORGAN. Mr. President, the Senator from Montana has offered an amendment. I am trying to determine if there is a list and how I might get on the list. I might propound the question to the Senator from Connecticut. There has been a Republican amendment offered, and that was set aside and the Senator from Montana offered one. I would like to talk to whoever is making a list.

Mr. DODD. There isn't one. This amendment will be agreed to. It is not going to require a vote. Other matters will require debate and discussion. That was the only reason to do this—to get it in the queue—and at some point today there will be an agreement to accept that amendment. They just didn't do it yet. I don't have a particular queue lined up.

It is my intention to ask Senator SANDERS to offer his, once we complete this—to be the next in line. I ask my colleagues to, instead of jumping up one after another trying to get in the queue, come and talk to us and let us orchestrate it in a way that will allow for consideration of various parts of the bill.

Mr. DORGAN. Mr. President, I thank my colleague from Rhode Island for his courtesy, and I thank Senator DODD. I was here earlier. I will come and talk about that queue as it exists. I hope my amendment on too big to fail will be part of the early amendments.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I was delighted to give the distinguished Senator from North Dakota a chance to clarify that.

I will speak just for a minute about amendment No. 3746, which I will not be calling up right now but which I intend to work with Chairman DODD on to call up later.

I wanted to mention that this afternoon this amendment received the endorsement of Americans for Financial Reform, a coalition of dozens of national and State consumer groups that are working to help pass the critical legislation we are debating today.

In addition to the coalition as a whole, the amendment has been endorsed by individual members as well, including the AARP, the Consumer Federation of America, Consumers Action, Consumers Union, and on behalf of its low-income clients, the National Consumer Law Center.

These groups have sent a letter to each of my colleagues which reads in part:

On behalf of consumers, AFR strongly urges you to support Whitehouse's Interstate Lending Amendment. By reinstating protections that existed prior to the U.S Supreme Court's decision in Marquette National Bank of Minneapolis v. First of Omaha Service Corp (1978), Congress will take a step in the right direction toward protecting consumers and leveling the playing field between national credit card companies and their local and community oriented counterparts.

The Whitehouse Interstate Lending Amendment takes a strong step towards restoring to each state the ability to protect its citizens from lenders based in other states. We strongly urge you to vote in favor of this Amendment and in favor of the consumer protections this Amendment promotes. By leveling the playing field between national banks and local lenders, you will send a strong signal to Main Street that their interests count. We urge adoption of this modest, yet tremendously helpful amendment.

Mr. President, I ask unanimous consent to have printed in the RECORD this letter dated today from Americans for Financial Reform.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICANS FOR
FINANCIAL REFORM,
Washington, DC, May 5, 2010.

Re Support for Whitehouse Interstate Lending amendment to S. 3217.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: The consumer, employee, investor, community and civil rights groups

who are members of Americans for Financial Reform (AFR) write to express strong support for the Whitehouse Interstate Lending Amendment that will be offered during floor debate on S. 3217, the ''Restoring American Financial Stability Act.''

This amendment will restore to the states the ability to enforce interest rate caps against out-of-state lenders. By so doing, the amendment will help level the playing field so that intrastate lenders such as community banks, local retailers, and credit unions no longer are bound by stricter lending limits than national credit card companies.

Under current law, national banks are bound only by the lending laws of the state in which the bank is based. As a result, the current system gives lenders an incentive to locate in states with weak or non-existent interest restrictions. A handful of states, eager to attract lucrative credit card business and related tax revenues, have all but eliminated their consumer protections.

On behalf of consumers, AFR strongly urges you to support Whitehouse's Interstate Lending Amendment. By reinstating protections that existed prior to the U.S. Supreme Court's decision in *Marquette National Bank of Minneapolis* v. *First of Omaha Service Corp* (1978), Congress will take a step in the right direction toward protecting consumers and leveling the playing field between national credit card companies and their local and community oriented counterparts.

The Whitehouse Interstate Lending Amendment takes a strong step towards restoring to each state the ability to protect its citizens from lenders based in other states. We strongly urge you to vote in favor of this Amendment and in favor of the consumer protections this Amendment promotes. By leveling the playing field between national banks and local lenders, you will send a strong signal to Main Street that their interests count. We urge adoption of this modest, yet tremendously helpful amendment.

Please direct questions to Maureen Thompson.

Sincerely,

AMERICANS FOR FINANCIAL REFORM.

Mr. WHITEHOUSE. Mr. President, I know the membership of this organization that supports the amendment includes AARP, as I mentioned, that also supported it individually, the Center for Responsible Lending, Common Cause, Consumers Union, the NAACP, the National Association of Investment Professionals, the National Council of La Raza, and the Veterans Chamber of Commerce, in addition to a great number of other organizations.

This is an important amendment. It closes a loophole that was opened by the Supreme Court decision of 30 years ago, the decision to define the term ''located'' in the National Banking Act from way back in the Civil War era, 1863, as meaning the location where the bank is located, not the location where the consumer is located, so that when there is a bank in one State doing business with a consumer in another State, the laws of the bank's State govern.

There is nothing particularly wrong with that decision. The problem is that the banks figured out that they could go to States that had the worst consumer protections or go to States that would be willing to chuck their consumer protections in return for the influx of business. From those States which have the worst consumer protection laws, they could then market their products around to other States and undercut and dodge around the laws of Rhode Island, the laws of Minnesota, the laws of Connecticut, the laws of Iowa, the laws of Virginia—the laws of all the States that for more than 200 years, in the history of our Republic, had this authority to regulate interest and to protect our consumers.

This is an unintentional loophole. It has created grievous abuse of consumers who for the first time in the history of America are paying 30-plus interest rates under the law. When you and I were growing up, Mr. President, if a flier came in the mail that offered a credit card with a 30-percent interest rate, that would probably be a matter to bring to the attention of the authorities because it would be illegal. Now they market this stuff at will, and too many Americans, too many of our State residents, too many consumers are paying exorbitant and what would in that State be illegal interest rates because of that loophole. It is long past time to change it. This amendment would close it.

I urge the support of my colleagues, and I look forward to the chance to call up this amendment.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3812

Mr. HARKIN. Mr. President, I come to the floor to speak about an amendment I have filed along with Senators SCHUMER and SANDERS, amendment No. 3812. The purpose of the amendment is very simple: to protect consumers from being charged unfair and unreasonable fees by ATM machines.

How often have you gone to an ATM machine to access your own cash from your own credit union or your own bank and they charge you a couple bucks, $2.50, $2.25, $3, $4? We have seen as high as $5 in parts of the country. I wish to talk about that issue, how unfair it is.

In recent years, Congress has acted to protect consumers by setting appropriate limits on the types of fees that financial institutions can charge consumers in areas such as credit cards, and spurred by a good proposal by Chairman DODD, the Federal Reserve is now considering rules regarding overdraft fees. One area that remains unregulated is the fees consumers pay to use ATMs.

Right now there is no limit that the operator of an ATM can charge a consumer for using that machine. Currently, the only regulation in this area—clearly insufficient, I might add—is that the operator must disclose how much they will charge. So when you access an ATM it has to tell you how much they are charging you and you can then refuse to do that, if you want. But this nominal disclosure requirement does nothing to ensure the charges are not arbitrary ways for banks and third-party owners of these machines to make an unreasonable sum on the backs of consumers.

Some of my colleagues may remember that until 1996, most processing networks actually prohibited the operators of ATMs from adding an additional surcharge for the use of the ATMs. Instead, to cover the cost of the transactions, banks paid fees that passed between the consumers' banks, the ATM operating bank, and the card network. That fee of about 50 cents still changes hands today to cover the cost of processing. Simply put: By charging consumers these fees while collecting fees from other banks, these big banks are double-dipping on the backs of consumers. My amendment would end that double-dipping.

Enticed by the prospect of easy money, in 1996 the rules that prevented banks from charging consumers were overturned by the big card networks—Visa, Mastercard, and the big banks. For this reason, in, 1997, I was a cosponsor, along with Chairman DODD and others, of a measure introduced by then-Banking Committee Chairman D'Amato that would have required the card networks to restore these rules and charge nothing for ATMs. Unfortunately, we were unsuccessful in that effort. But it was bipartisan. Chairman D'Amato was a Republican.

As a result, because we were unsuccessful in 1997, the amount of fees that consumers pay has skyrocketed. According to estimates by the Federal Reserve, the average surcharge fee paid by consumers for accessing their own money is $2.66. As I said, in some cases—in airports and other places—it is as much as $5 for gaining access to your own money.

That doesn't seem right to me, and it doesn't seem right to a lot of consumers. It is unfair for people to pay that much to access their own cash. If ATM operators want to charge a fee to cover the cost of providing a service, I can understand that. But that fee needs to relate to what it actually costs to process the transaction, not just the maximum they think they can get away with.

To ensure these fees are reasonable and related to the costs of processing the transaction, my amendment would require the new Consumer Financial Protection Bureau to ensure that fees charged consumers at ATMs bear a reasonable relation to the cost of processing the transaction.

The best data available suggests that the cost of processing a transaction today—ready for this—is 36 cents. Think about that the next time you go to the ATM and you have to get some cash and it comes up and says they are charging $2.50. The real cost of that is

about 36 cents. Where does the rest of the money go? The rest of the money goes to the big banks and the big card networks, and they are making a fortune.

We got that data from a survey conducted by the Office of Thrift Supervision, which suggested in 1997—the time we had our amendment—that the cost of processing a transaction was only 27 cents. So we factored in inflation, and that would bring the cost to about 36 cents today, and that assumes any improvements in technology have not brought down costs, which, obviously, they have. We have new technologies, faster speed networks, which probably has brought the cost down. So when I say the cost of going to an ATM machine to access money is 36 cents, that is on the high side.

So what our amendment basically says is that they can set up a reasonable charge based upon what the costs are, but we put an upper limit. We say no more than 50 cents per transaction. So our amendment would basically say anytime you go to your ATM machine they have to charge you a reasonable fee based upon what would be set, but in no case more than 50 cents, in no case more than 50 cents.

Again, I would just point out that until 2002, in my State of Iowa, the law required any bank establishing an ATM had to make that available at no cost—no fee to all users. So Iowa did not charge any fees at all, and Iowa banks did just fine under this agreement. Iowa consumers were protected from unfair fees.

But in 2002, this reasonable Iowa law was preempted by Federal banking regulators. Federal banking regulators preempted this. Again, in the absence of these laws, the Federal banking regulators have taken no action to limit the amount of fees consumers can be charged. According to the New Rules Project, national banks—these big banks—collected almost $5 million in ATM fees from Iowa consumers in the first 6 months after the Iowa law was overturned. Iowa credit unions data said it was about $10 million just in the first year. Well, add that up, and that can come to a lot of money.

Anyway, I bring this example of how things were in Iowa before 2002 because it is the kind of balance that the bill pending before us should restore. Quite frankly, things have tipped so far in favor of big banks in this country, and so far away from consumers, that we often don't even know what a reasonable balance looks like anymore. But the example of Iowa from several years ago in which consumers were protected from unfair ATM fees while banks still profited, is an example—I think an excellent example—of the balance we need to return to.

So this broader bill that Senator DODD and Senator SHELBY have brought forward isn't antibusiness or antibank, but it does seek to return us to a situation in which the needs of consumers and the rights of businesses are considered alongside one another. It restores some balance for consumers in our society.

When I looked at this bill, I thought: Well, there is one area that kind of seems to be getting overlooked. I suppose a lot of people might say: Well, $2 is not much. Well, here is the other unfair thing about it. The average person going to an ATM machine probably takes out $20, $50 to get them through a day or 3 or 4 days in the week, and they are charged $2.50 for accessing that $20 or $50. Someone else goes in and wants to get $500, and they are charged the same $2.50. So the burden falls more heavily on low-income people, moderate-income people who need to use the ATM machines to get some cash to get them through. That is grossly unfair.

It is unfair that the banks and the ATM operators can charge whatever they want to charge. As I pointed out earlier, according to the Office of Thrift Supervision and the data they collected, the average cost of processing this ATM transaction is only 36 cents. Why are you being charged $2.50 or $3 or as much as $5? Well, that is what this amendment seeks to stop; again, to get this balance back where it should be.

My amendment is also supported by the U.S. Public Interest Research Group, the Consumer Federation of America, Consumer Action, Consumers Union, and the National Consumer Law Center on behalf of its low-income clients.

I close by thanking my colleague, Senator DODD, for his tireless work to move this critical bill forward and to again help establish that balance in our country between our consumers, our depositors, our community banks, and the big banks. As I said, we have gotten so far off track we hardly recognize what a balance is any longer. I think this bill does a great thing in trying to restore that balance. I just want to make sure that consumers are no longer taken advantage of by these unfair ATM fees that are out there, and that is why I will be offering this amendment at the appropriate time.

Mr. President, I see the chairman is here.

Mr. DODD. If my colleague will yield.

Mr. HARKIN. Sure.

Mr. DODD. I just want to thank him for all his work. We have spent a lot of time in the last year or so on the health care debate, where we sat next to each other day after day going through all of that. We, obviously, go back a lot longer than that.

The Senator from Iowa and I arrived here on the very same day. The pages have oftentimes asked me when did I get here, and I have said: Thomas Jefferson was President when I arrived.

It wasn't quite that long ago, but we arrived together on the same day, 35 years ago, in the House of Representatives, and we have been great friends and colleagues.

No one cares more about not only his State but people all across this country who struggle. He is the author of the Americans with Disabilities Act, affecting millions of Americans, and I have a family member who benefitted from Senator HARKIN'S work. I wish there had been someone around in the 1930s when she was born who might have stood up and recognized her talents and ability. Fortunately, she grew up in a family where they did some things and she ended up helping restore the American Montessori system of teaching as an early childhood development specialist. But had she been born under different circumstances, I suspect she would have been doing piecemeal work somewhere.

So there is a lot for which our country has to thank the Senator from Iowa. I appreciate his efforts on this amendment and thank him for his general concerns on the bill as well.

Mr. HARKIN. I thank my friend from Connecticut. Every time I see my good friend here, I think of all the work that he did in getting our health care bill through, and now this. Talk about going out on a high note. I am sorry, as he knows, that he is not going to be here after this year.

Again, I think the fact that Senator DODD did the health care bill and got it through was a great achievement for the people of this country and now this financial reform, to make sure we don't go through what we did a few years ago again and to help our consumers have a little better balance in their dealings with the big banks and the big investment houses. This is a great bill, and I compliment him for it.

I know it has been a long tough slog, as they say, but future generations will look back and thank Senator DODD both for the health care bill, and I think for this financial reform bill. A lot of people may not understand all the intricacies of it—the high finance and all that stuff. Sometimes you can get a little dizzy thinking about all this stuff. But he understands it. He gets it. And Senator DODD has done a magnificent job in putting this bill together. It is going to help protect our consumers in this country.

So that is why I am proud to support it. I hope he doesn't mind if I offer an amendment to it, as I am going to do on the ATM piece. But I thank the Senator, and I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MENENDEZ. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MENENDEZ. Mr. President, I come to the floor this afternoon to talk about the bill before us. I commend my colleague, the chairman of the Senate Banking Committee, Senator DODD, for his leadership on this crucial reform.

I want to start off by reiterating what I know many of my colleagues

have said, that this is a strong bill and it is a necessary bill. There is no doubt that we need Wall Street reform and we need it now. When tens of millions of Americans have lost their jobs, homes, and savings, Americans cannot wait any longer to end the reckless Wall Street practices that caused those problems.

I certainly never want to see us again be in a position where we had the Chairman of the Federal Reserve come to us, about a year and a half ago, and say to members of the Senate Banking Committee, you need to act because financial institutions are on the verge of collapse and their collapse would create a consequence to the national economy of enormous proportions.

I will never forget the dialog that took place there, in essence when Chairman Bernanke was asked, the Chairman of the Federal Reserve, what happened? Don't you have enough time, some tools at the Federal Reserve to get us through this period of time? He basically said, if you don't act you will have a global meltdown which basically means a new depression in the 21st century. Certainly a depression in the 21st century is much different than the depression this country lived through under President Roosevelt.

Since he is someone whose expertise is in Depression era economics, how we got into the Depression, what made it worse, how we got out of it, it was a pretty compelling set of arguments.

So here we are. What we want to do is make sure we are never put at that risk again; that there is not anything that is too big to fail because, in doing so, you can make all the wrong decisions knowing that even when you make the wrong decisions, and they are risky, the taxpayers will have to bail you out because we cannot have the country's whole economy go under. At the same time, we want to try to strengthen our regulatory process so we not only not face that reality but we create clear rules of the road.

I am for a free market. I believe in a free market. But there is a difference between a free market and a free-for-all market. There is a difference between when someone takes their own capital, whether as a company or as an individual, and makes an investment and when the investment does good, good for them; but when the investment goes bad we all have to pay for it. We cannot have a system where profits are privatized but losses become the general public's responsibility. That is, in essence, the core of what we are trying to do here—to make sure that such a system, which is what we have had, not a free market but a free-for-all market, gets changed so we never face that again.

As I said, I think this is an incredibly strong bill. But even a strong bill can have suggestions to make a good bill even stronger. I commend Chairman DODD for being open to ideas to make this bill even stronger, regardless of which side of the aisle they come from. Now that we have broken the Republican logjam that has been holding this bill up for over a week, I hope we can get to the business of fully legislating in a full and open debate. I know that is what the American people want and expect, that the Senators they sent to Washington actually get to work on the business of fixing these problems; not that they sit on their hands while one party holds up debate because the bill didn't do everything they wanted it to or because we had conversations—some of our colleagues on the other side of the aisle had conversations with Wall Street and basically they don't like a lot of what we are doing here. But, in fact, it is critical to the Nation's economic security.

I am glad to see that we have colleagues now on the train. I hope people do not try to pull the emergency brake switch to try to stop us from going to where we need to go.

I think this is a great bill but there are some amendments I plan to offer to the bill. I think they make the bill even stronger. I have filed an open books amendment, to require companies to be more transparent in their financial reporting. Many experts believe one of the reasons we got into this mess in the first place was because no one—not investors, not regulators, not counterparties, not even the people running the companies—could actually figure out the true value of these big Wall Street banks. That is because banks hid a significant percentage of their liabilities, their risks, off their balance sheets. For example, Lehman Brothers treated $50 billion in repurchase agreement transactions as sales instead of financing transactions on their balance sheets, misleading everyone about the state of Lehman's finances.

The bottom line, you know, may sound very technical but if I can take my liabilities off of my personal balance sheet and put them somewhere else and look as though I am better off than I am, that is fundamentally wrong. Clearly, had there been more transparency we might have dealt with the Lehman situation sooner, thus reducing the repercussions of a catastrophic bankruptcy.

The amendment I am proposing is simple. It requires companies that are designated as systemically risky to disclose all their off-balance sheet activities in their annual 10–K report to the Securities and Exchange Commission, and provide detailed justifications for why they are keeping those liabilities off their balance sheets.

It also requires disclosure of daily average leverage ratios in quarterly reports. This will prevent companies from moving liabilities off their balance sheets only days before when they are reporting earnings, as Lehman and others allegedly did.

It is a step toward transparency. We know capital markets work best when they are transparent. That is the thrust of what this bill is trying to do. Put simply, the largest banks should not be able to deceive regulators, investors, counterparties, and the public, by hiding their liabilities in off-balance vehicles. We need transparency and clarity, not trickery and deception.

I also am happy to join with Senator AKAKA, who is leading on this particular amendment but I am his prime cosponsor, to require stockbrokers to act in the best interests of their clients. What a revolutionary concept, that stockbrokers act in the best interests of their clients. Brokers are not required to act in the best interests of their clients and can sell clients worse investments because they make more money on them, without the client ever knowing it. Brokers are only required to have reasonable grounds to believe that a property they are recommending is suitable for the customer, even if it is not the best product for the customer. Typically, brokers do not have to make disclosures about conflicts of interest or past infractions. In contrast, investment advisers are legally and ethically bound to put a client's interest ahead of their own—in essence to have a fiduciary duty; and to fully disclose those conflicts they may have.

All brokers currently have exactly the same conflict of interest that Goldman Sachs had in its civil fraud case by the Securities and Exchange Commission: financial incentives to steer clients toward bad investment products that brokers made more money on.

But retail investors are confused. They commonly think the services that investment advisers and brokers provide are nearly identical. An SEC Commission study in 2008 by the RAND Corporation found that investors were confused about the differences. So I don't think we need further studies. Senator AKAKA's amendment and mine would end the confusion. It would require brokers to act in the best interests of their clients, just as investment advisers already do. It requires brokers to disclose conflicts of interest, so brokers would have to tell retail clients if they get more fees for selling a particular mutual fund or annuity product.

It gives the FTC discretion to apply a fiduciary duty standard for all types of investors which would include institutional investors who are victimized by the allegations in the Goldman Sachs case. Investment advice should be transparent. If there are conflicts of interest or higher fees for a particular product, investors should know about it. Investors need to know that brokers have a duty to act in their best interest.

I also have an amendment to expand the opportunities for women and minorities in banking. Currently, the staff of financial regulatory agencies lags in diversity. According to the Office of Personnel Management, minorities comprise only 18.7 percent of financial institution examiners; women comprise 34 percent.

A recent GAO report found that among minority banks, only about one-third thought their regulators were doing a good or very good job of making an effort to protect or promote their interests and less than a third of minority-owned institutions have utilized services offered by the regulators in the last 3 years.

Only 5.7 percent of African-American firms and 5.6 percent of Hispanic firms obtained bank loans to start their businesses, compared to 12 percent of non-minority firms.

The amendment I am proposing would rectify this by creating the Offices of Minority and Women Advancement at all the major financial regulatory agencies. Those offices would be responsible for all matters of diversity, including diversity in agency employment and contracts. Office directors would provide annual reports to Congress on diversity issues, with recommendations for improvements.

The amendment would also require publicly traded companies to provide in annual SEC filings ''diversity report cards'' which would break down by gender and race the percentages of officers and employees who are minorities and women and the percentage of total compensation they receive.

Finally, it extends the minority banking requirements under section 308 of the Financial Institutions Reform, Recovery and Enforcement Act to the Federal Reserve and the OCC. A similar amendment has already passed the House of Representatives unanimously. I would certainly hope we could do the same here.

Diversity within the Federal banking agencies will help ensure different perspectives are being brought to bear on issues and enhances the likelihood these solutions will be comprehensive and inclusive of a broad range of views. It will make our banking system fairer, more stable, and more just.

I also have an amendment with Senator MERKLEY, to prohibit corporate executives and highly paid employees from hedging against any decrease in the market value of their employer's stock. This amendment is one that I think is very important because I am concerned there are a lot of bad incentives undermining the goals of executive compensation.

A recent study found that at least 2,000 cases at 911 firms over an 11-year period in which executives tried to profit by betting against their own company—by betting against their own company. Hedging undermines, in my mind, the whole point of incentive compensation to make sure that executives only benefit when the company does well.

If they can hedge their stock, then it does not matter how well the company does, because either way the executive makes money. Tails they win, heads they win. That simply is fundamentally wrong. Worse, it may, in some cases, give executives an incentive to sort of ''throw the game,'' to use their privileged position to take a position that may very well not be in the company and its employees' best interests and then make a killing by selling the company stock short. Not good for the company, not good for the employee, not good for investors. My amendment would place a ban on stock hedging by executives and highly paid company employees, namely those making more than $1 million per year, preventing them from betting against their own company.

Put simply: Executives and highly compensated employees should never have financial incentives to act against the best interests of their very own company.

I am hoping some of these may very well be able to see their way into a managers' package. I hope we do not have to come to the floor to offer all of them.

The recession has hit everyone. Community Development Financial Institutions have been hit hard, especially hard. They are in a tough position because they have got to rely on the big banks for capital, which is neither affordable nor easily accessible.

My amendment would authorize the Treasury Department to guarantee bonds issued by qualified Community Development Financial Institutions for the purpose of community and economic development loans. There is also no cost to the taxpayers to do this. CDFIs have a track record of job creation and community development. They are the most effective way to infuse capital in low-income communities because the capital goes directly into those communities and economic development efforts.

In focusing on the finances of Wall Street, I think this is an opportunity not to forget about the finances of Main Street, where most of the jobs are and the devastating impact that Wall Street's actions have had on Main Street.

Lastly, I wish to talk about whistleblower protections. They are the first and most effective line of defense against corporate fraud and other misconduct, yet because of inadequate protections against retaliation, would-be corporate whistleblowers often keep quiet when they could be protecting the public from illegal activity.

As we have seen in the emerging Lehman Brothers scandal, a whistleblower who tried to alert management to illegal accounting tricks was fired. Though the Sarbanes-Oxley Act of 2002 did much to expand protection of corporate whistleblowers from retaliation, it lacks several modern whistleblower protections that have been standard in every piece of legislation since 2006.

My amendment updates Sarbanes-Oxley protections against retaliation by giving whistleblowers 180 days to file a claim instead of the 90 that exists right now; giving whistleblowers their day in court with a clearer right to a jury trial; clarifying that whistleblowers are entitled to compensatory damages; strengthening due process rights for whistleblowers by eliminating inconsistencies in current law; preventing employers from gagging whistleblowers by holding them to contractual obligations; ensuring that whistleblowers will be protected for all disclosures of material misconduct.

We think those opportunities strengthen a citizen to be able to engage and to come forth in a way that protects the company, that protects the investors, that protects all of us in the economy at large. So, again, I want to commend Chairman DODD for his leadership in this effort. It has been a pleasure, as a member of the Banking Committee, working with him on some of the underlying provisions that he has already included in the bill that makes it so strong.

I stand ready to work together to address these remaining issues, some of which I hope we can work through and get accepted, others which, if necessary, I am ready to come to the floor and seek to offer.

At the end of the day, I want a bill that puts New Jerseyans in a position, and all Americans, in which they will never be asked to reach into their pockets to take care of the excessive decisions of companies that privatized the profit but then said, when it went bad and the gamble did not go well, that all of us should pay. We cannot have that. That is what the core of this bill does. That is why I have been proud to work with the chairman.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, before our colleague from New Jersey leaves, let me thank him. He is a member of our Banking Committee, and a very valuable member. He has been tremendously helpful as we have worked together, through my 37 or 38 months as chairman of the committee, very closely on the housing issues, on the credit card legislation.

There have been some 42 measures that have come through the Banking Committee in the last 38 months, 37 of which have become the law of the land. That is a pretty good record out of our committee. It reflects the tremendous effort of members of that committee to help pull together sound pieces of legislation.

Senator MENENDEZ has been critical in so many of those efforts. I want to thank him for that and I want to thank him for his ideas on this bill. We are hoping we get many of these amendments up and have a chance to debate them. But I thank him for his contribution already.

The PRESIDING OFFICER. The Senator from Texas.

AMENDMENT NO. 3749

Mrs. HUTCHISON. Mr. President, I rise to speak on the Hutchison-Tester amendment. This is an amendment that truly will help community banks. It will level the playing field for them. It is something I have been working on

for several months, during all the consideration this bill has gone through in committee. This was one of the first things I wanted to attack.

I am pleased we are going to get a vote very soon on this amendment, either a voice vote or a record vote. I know that with the bipartisan support we have, we will pass this amendment.

I thank the cosponsors of the amendment: Senators CONRAD, MURRAY, BURRIS, BROWN of Massachusetts, HARKIN, SHAHEEN, CORNYN, JOHANNS, NELSON of Florida, and NELSON of Nebraska, as well as, of course, Senator TESTER and myself.

We are trying to level the playing field for community banks. The underlying bill sets a way of assessing the banks by the FDIC. There has been flexibility in the past, but we are going to set in statute with this amendment that banks will be assessed based on assets minus capital. That should be the way to assess.

Community banks, with less than $10 billion in assets, rely heavily on customer deposits for funding. But that penalizes these very safe institutions with these customer deposits by forcing them to pay deposit insurance premiums far beyond the risk they would pose to the bank system. Despite making up just 20 percent of the Nation's assets, these community banks contribute 30 percent of the premiums to the FDIC. At the same time, large banks hold 80 percent of the banking industry's assets but pay only 70 percent of the premiums. There is no reason for community banks to have to make up this gap.

What we need is a level playing field. It is the community banks that are loaning to our businesses. It is community banks that are keeping our communities supported in so many ways, from the football programs, to the scoreboards in stadiums, to making sure small businesses have inventory loans. Community banks didn't cause the problems. To have them pay more proportionately in FDIC insurance than the big banks do is unfair.

Senator TESTER and I want to correct this inequity. That is exactly what the Hutchison-Tester amendment does.

I appreciate very much Senator DODD saying he agrees with us, that he will work with us to pass this amendment. I am pleased we have such bipartisan support. It will immensely improve the bill and give community banks one of the pieces they need to stay in business and hopefully free them to provide more liquidity to the businesses in communities all across America.

I yield the floor.

Mr. DODD. Mr. President, I thank my friend from Texas, a member of our committee, Senator HUTCHISON. There are a lot of amendments people will offer that subtract or add provisions to the bill. Her amendment with Senator TESTER and others is a very important piece. This could be a separate bill. It could be a freestanding idea. This would qualify as such an idea. Maybe it doesn't sound like much to people, but to consider the liabilities, that really gives a far more accurate picture of the financial condition of a smaller bank. Therefore, the assessments make so much more sense if you have a fuller view of how that institution is doing.

It is so painful, on Friday afternoons after 4 or 5 o'clock, every week, 5 banks, 6 banks, 10 banks—I feel so bad when I hear the names—a lot of them in small towns in our country, maybe small amounts, some of them a little larger—you think about a small town where there might be one lending institution, maybe two but not much more than that—when one closes its doors, what it means to a community to lose that lending institution where everybody knows everybody and you don't have to have a computer printout to know whether Mrs. HUTCHISON or Mr. DODD is going to be able to meet that obligation; they have known the family. They know how it works, to be able to help them by reducing the burden financially on them.

At the same time, we need to keep up that insurance because you want to protect depositors. However badly you feel—and I do every week when I read the names of the smalltown banks that have to close their doors—you want to make sure those customers can show up Monday morning and handle their finances. Shifting the burden a bit more to larger institutions that can afford to do so is a great idea.

As my colleague knows, I was prepared to accept it this afternoon. I don't have the right to do that on my own. If I did, if I were king for a moment, I would say: Let's accept the Hutchison-Tester amendment. I am confident we will.

I thank my colleague and Senator TESTER for offering a very sound, very worthwhile proposal that will be a help to community banks.

Mrs. HUTCHISON. I thank the distinguished chairman of the committee. Of course, we could take over the world right now, since he and I are the only ones on the floor.

Seriously, Mr. President, this is significant because I do believe this bill is going to pass. We are working very productively to try to make some changes in the bill that will make it much better for community banks.

As the chairman knows, the FDIC has decided to prefund its deposit insurance fund for the next 3 years by the end of this year. If we change this formula and ensure community banks will not carry the heavier burden, that is going to have an impact this year in the liquidity of those banks and their capability to lend.

I appreciate very much the chairman's support. I look forward to having our amendment either voice voted or a record vote. I think we will win overwhelmingly with the support of the chairman and ranking member.

Mr. LEAHY. Mr. President, last week we began debate on Senator DODD's Wall Street reform legislation. This is the culmination of a lengthy dialogue on how best to rein in Wall Street's excesses, and bring about a new era of corporate responsibility. I have pushed, and will continue to push, for reform that preserves the role of the antitrust laws as a tool to keep Wall Street honest and promote competition in the financial industry.

The recent economic crisis showed all of us that corporations do not act responsibly without adequate oversight. As we work to pass this landmark legislation, it is important to remember that, today, there is another industry that is not required to even play by the same rules of competition as everyone else. Benefiting from a six-decade-old special interest exemption, the health insurance industry is not subject to the Nation's antitrust laws. We can surely agree that health insurers should not be allowed to collude to fix prices and allocate markets.

Large corporate interests impact the daily lives of hardworking Americans and must be regulated. When any large corporation acts irresponsibly, whether it is a financial institution or a health insurance company, Americans pay the price. Today I filed the Health Insurance Industry Antitrust Enforcement Act as an amendment to the Wall Street reform bill. This amendment, which is cosponsored by 21 other Senators, will repeal the health insurers' antitrust exemption and ensure that they follow basic rules of fair competition. Competition ensures that consumers will pay lower prices and receive more choices.

Congress and the President have recently enacted comprehensive health insurance reform. It was clear from that debate, and from the Judiciary Committee's hearing on this issue in October, that the time to repeal the health insurers' antitrust exemption is now. The language I am offering today passed overwhelmingly in the House, and it is supported by the President. It has received a cross-section of support from groups such as the Consumer Federation of America, the Consumers Union, and the American Antitrust Institute. This repeal will ensure that basic rules of fair competition apply to those reforms included in the new health insurance reform laws.

Last fall, I introduced similar legislation to repeal the health insurers' antitrust exemption. The Judiciary Committee hearing I chaired examined the merits of this repeal. The lack of affordable health insurance plagues families throughout our country, and this amendment is an important step towards ensuring that health insurers are subject to the laws of fair competition.

Today, I renew my call for the Senate to take up and pass this amendment to repeal the antitrust exemption for health insurance companies. I hope all Senators will join me in support.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant editor of the Daily Digest proceeded to call the roll.

Mr. FRANKEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DODD). Without objection, it is so ordered.

Mr. FRANKEN. Mr. President, I would like to talk a little further about the problems with credit rating agencies. Yesterday, I filed an amendment to the Wall Street reform bill that would create a Credit Rating Agency Board and help encourage competition and, most importantly, accuracy in the credit rating system.

The major role the credit rating agencies played in the recent financial crisis has been largely overlooked. Most of the blame has been directed at Wall Street's oversized banks and the investment firms that were securitizing any kind of debt they could get their hands on. Ultimately, these firms got their hands on quite a lot, and one of their favorite products became mortgage-backed securities.

Investment banks and hedge funds realized there was a lot of money to be made—there is about $9 trillion worth of mortgage-backed securities in the market right now. So they securitized every mortgage they could find, and once this happened, this source of easy profits dried up. So Wall Street demanded more, and mortgage lenders all too happily lowered their lending standards and delivered a new fleet of subprime mortgages for Wall Street to securitize.

As we all know, subprime mortgages are riskier than regular mortgages. That is why they are called subprime. Borrowers are more likely to default. Yet when these risky mortgages were packaged, firms were able to sell them easily.

One of their biggest selling points? Well, they came with a nice big ''AAA'' stamped on them—three letters that say: This product is safe. This product belongs as part of a pension fund, a retirement account or an educational endowment.

So that is where many of these risky subprime mortgage-backed securities ended up. When they failed, they ended up costing working Americans billions and billions of dollars in losses to their savings. But much of this could have been prevented, if only the ratings for these exotic securities had reflected their true risk.

We need to reform the way credit rating agencies do business. Right now, there is nothing to compel them to produce ratings that reflect a product's real risk. Quite the contrary, they are incentivized to provide highly inflated ratings so they can keep getting repeat business.

That is why I have filed an amendment to change the incentives in the industry. My amendment, No. 3808, which I have crafted with Senators SCHUMER and NELSON, would finally encourage competition and accuracy in an industry that has little of either.

To stop the jockeying by raters to get repeat business, my amendment would create a clearinghouse—a clearinghouse—to assign a rating agency to a product issuer for the purpose of an initial rating. The clearinghouse—which will be a self-regulatory organization called the Credit Rating Agency Board—will set up its own rules on how this assignment will work. It could be random, it could be formula based, just as long as the issuer does not choose which agency rates its product. This will eliminate the incentive for the rater to give an inflated rating in the hopes of getting that repeat business.

The Credit Rating Agency Board would be comprised of industry experts: investors, issuers, raters, and, of course, independents. A majority of its members would be investors, including institutional investors who have experience managing pension funds and university endowments. They would have a vested interest in accurate credit ratings because they depend on them when making investments.

Another key element of my amendment is that the Board will regularly evaluate the performance of the credit rating agencies, and they would have to take that performance into account in coming up with an assignment mechanism. In my mind, there is no better way to get accurate ratings than giving more initial rating jobs to the most accurate raters—and fewer jobs to those that repeatedly do a sloppy job.

Finally, the Board will be able to prevent raters from charging unreasonable fees. This will strike at the heart of sweetheart deals, in which a rater asks for more money for a better rating. Make no mistake, that is what has been happening. Just last week, Chairman LEVIN held a hearing in the Permanent Subcommittee on Investigations. His team revealed many e-mail exchanges between issuers and credit rating agencies that exposed how they did business.

Here is one e-mail from Moody's to Merrill Lynch, and I quote:

> We have spent significant amount of resources on this deal and it will be difficult for us to continue with this process if we do not have an agreement on the fee issue. . . . We are agreeing to this under the assumption that this will not be a precedent for any future deals and that you work with us further on this transaction to try to get to some middle ground with respect to the ratings.

Does this sound like Moody's was objectively evaluating the value and risk of Merrill's product? It doesn't sound like that to me.

I am confident the assignment process under my amendment will result in increased competition in the credit rating industry and provide incentives to produce accurate ratings. The amendment allows issuers to go to whichever rating agency they choose for second or third ratings, but these followup ratings will more likely be accurate because raters know they will be compared to the initial rating. More accurate ratings will mean safer products that end up in pension funds and in retirement accounts. Safer products mean more retirement security for working Americans.

So, once again, this all boils down to security and stability in our financial system. The greed and recklessness driving Wall Street over the past decade has wreaked havoc on our economy, and we need to take bold action to rein it in.

Ignoring the magnitude of this problem will only come back to haunt us. We simply can't let that happen. We must take action to fundamentally change the way the system works by putting accuracy first in these ratings.

I call on my colleagues to join me and Senators SCHUMER, NELSON, BROWN, WHITEHOUSE, and MURRAY in supporting this essential reform to restore integrity to the credit rating agency system.

Thank you, Mr. President. I yield the floor, and I note the absence of a quorum.

The PRESIDING OFFICER (Mr. BEGICH). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. WICKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WICKER. Mr. President, I had not intended to speak tonight, but having heard my friend, the Senator from Minnesota, speak about the problems with the rating agencies, I thought I would rise to say that in very many respects the Senator from Minnesota is correct. It is my understanding that the underlying bill as yet has no provision whatsoever dealing with the rating agencies. I think certainly if that remains, it will be a major flaw in the legislation.

I don't know the details of the amendment the Senator from Minnesota was referring to, but I certainly welcome debate about the rating agencies to make sure they are accurate and to acknowledge so many mistakes that have been made by those agencies in the past. So I wish to commend the Senator for his debate about this issue.

Mr. DODD. Mr. President, will the Senator yield?

Mr. WICKER. Mr. President, I have a couple more points I wish to make, and I don't have much more time. But I am happy to yield to the chairman.

Mr. DODD. Mr. President, title IX of the bill—and I am not suggesting you are going to love every dotted i and crossed t, but in title IX of our bill we do cover rating agencies. Again, this is a complex area, and there are different ideas about how to do this. But the legitimate point made by the Senator from Minnesota about rating agencies is something we share, and in title IX we try to address ways in which we can get far more accountability out of these agencies.

Mr. WICKER. Mr. President, reclaiming my time, I appreciate that. I think the Senator would also concede that there are many in this body and in this building who would make a case that the bill is far from adequate as regards to the rating agencies, and we will have debate about that.

Mr. DODD. I accept that argument, but I would not accept the argument there is nothing in the bill about rating agencies.

Mr. WICKER. I appreciate the Senator's statement. I hope we can strengthen the bill in regards to rating agencies. I also hope we can do this: We have an opportunity in some amendments later on in this debate—perhaps next week or perhaps the week after—to address this question of the GSEs, Fannie and Freddie. I think almost everyone would acknowledge that much of the problem that was caused in 2007 and 2008 stemmed from the GSEs. There has been an effort on the part of Senator SHELBY and others over time to rein in and have some important regulations for Fannie Mae and Freddie Mac. I would hope we could have an honest to goodness debate and include this very important aspect of financial reform in this legislation; otherwise, I think we haven't gotten to part of the problem.

Then, I would say also, we are going to have debate over the next few days and perhaps weeks about this all-powerful consumer agency that would be created. Certainly, we need to protect the consumers. But as I understand this legislation which we will be asked to consider and to vote on and have an opportunity to debate, it creates one of the most important—one of the most powerful, all-powerful individuals in the entire Federal Government; someone who would not even have to answer to a board, as head of this all-powerful consumer protection agency. I think the fact that we are hearing more from Main Street rising up in dismay saying the Main Street agencies didn't cause these problems—the car dealers, the orthodontists who might finance payments over time, the medium-sized banks and credit unions—they say: Mr. Senator, we are not part of the problem. Why are we being penalized and brought into the purview of this all-powerful Washington, DC, regulator?

I think the concerns of Main Street can be addressed by the Senate, and we can still pass a bill that will cover the abuses of Wall Street which, after all, is what we are after.

So I wanted to use the remarks of the Senator from Minnesota as a springboard to begin to discuss a number of issues, including Freddie and Fannie, including dealing with too much power in the form of this regulator, as well as dealing with the issue which the Senator brought up of the rating agencies.

I thank the President, and I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, just on my own time, again, I don't necessarily expect agreement on everything, but I wanted to make the point that 40 pages of our bill deals with rating agencies. This isn't a page or two or a thought or two. There are sections that go in this bill from section 931 to 939, with subtitle C: Improvements on the regulation of credit rating agencies. Forty pages of this book deals specifically with ways in which we try to get greater accountability and reform in the credit rating agencies—a very important issue, one that obviously people have additional ideas about, and I accept that. There might be ideas that even strengthen this; I don't claim perfection. But I want to make sure people have looked at the bill before they get up and suggest there is nothing in this bill about it. Quite the contrary, there is a very strong section on rating agencies.

So, again, people are entitled to their own opinions but not their own facts. With all due respect to my friend from Mississippi who has unfortunately left the floor, I wish to make the point to him that he might not like what I have written—we have written—but there is very strong language in here on getting that greater accountability out of our rating agencies.

With that, Mr. President, I notice at least one additional Member who perhaps is going to come over to be heard, so I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. Mr. President, I ask unanimous consent that on Thursday, May 6, after the opening of the Senate, the time until 10 a.m. be for debate with respect to the Tester-Hutchison amendment No. 3749, with the time equally divided and controlled in the usual form; that at 10 a.m., the Senate proceed to vote in relation to the amendment, with no amendment in order to the amendment prior to the vote; further, that the Sanders amendment No. 3738 be the next Democratic amendment in order, and to clarify for the RECORD, the amendment would be called up upon disposition of the pending Shelby amendment No. 3826.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DODD. Mr. President, let me say this, if I can, while we are waiting to do the wrap-up here. We finished up on the series of votes sometime around 4 o'clock or 3:30 this afternoon. It is now 6:30. Other than some statements made by Members regarding various amendments, the pending amendment is the one offered by my colleague from Alabama dealing with the consumer protection part of the bill. I am anxious for us to debate that. I regret we didn't have any debate this afternoon.

I made the point that Members have amendments—and we have all been around—most people—long enough to know that with some 90 amendments, it is not going to mean every amendment people have will be offered. But to the extent that time is used effectively, we can maximize the number of amendments that can be offered. Whether you agree with our colleagues or not, they ought to be given the opportunity to offer an amendment and to debate it and get a vote. Again, that doesn't mean every amendment will be treated equally here, but I have been determined to try to make this work for as many Members as possible. But when 2 or 3 hours go by and not a word is spoken about a pending amendment, the hour will come—and I can predict the debate: You have not given us enough time to debate our amendments. I am keeping score privately about the times that have gone vacant when no one has talked on a pending amendment.

Tomorrow, after the disposition of the Tester-Hutchison, Hutchison-Tester amendment, I will be asking at that time prior to that vote for a time agreement on the pending amendment. My hope is it will be reasonable, take an hour or so to do that. I understand that. But I am not going to tolerate a whole morning wasted on that with all these other amendments. We need to have that debate and then move along. I say that respectfully.

We are not going to spend an endless number of days on this bill. There are a lot of other matters to be considered by this body. This is a very important bill, and it is important that we listen to the various ideas people want to offer to it.

I say this to my colleagues: Try to keep the time requests short. This was a good beginning today, but I would have preferred we could have used the last 2 or 3 hours to debate the pending amendment and then schedule a vote in the morning. I believe 2 or 3 hours to debate an amendment ought to be adequate. I recognize that not every amendment is considered as important as others. Prioritizing the amendments is important.

Senator BERNIE SANDERS has an amendment that will come up afterward. I cannot speak for him, but I asked him. He said he might take an hour. That is a reasonable request. He has an important amendment and wants to be heard on it. I hope Members will follow the Sanders example and be respectful of others so we can get many amendments in.

My hope is that tomorrow evening we will be here later. We are going to be here Friday, I gather. I do not make those decisions, but I have been led by the leadership to believe we will be here Friday. If I had my way, we would be here Saturday and Sunday to get the bill done. I will be urging the leader to keep us here as long as necessary to have a full debate on this bill. I am not sure I will succeed in those requests, but I want to make them.

Given the complexity of this bill and the interest Members have, if we utilize the time rather than sitting in quorum calls hour after hour—we will hear that bellowing that occurs: I never had a chance to be heard on my amendment. Why didn't I have time to be heard? The answer is going to be—I am keeping the record here—how much time I have been sitting around waiting for someone to come debate an amendment.

If I sound a little frustrated—it is a little too early in the debate to get frustrated, but I wanted to express it in advance of the real frustration that will come later on.

There will be no more votes this evening.

I see my colleague from Colorado is here. I am going to do the wrap-up and then allow my colleague to be heard.

MORNING BUSINESS

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO CONGRESSMAN DAVID OBEY

Mr. COCHRAN. Mr. President, I was saddened by the announcement of my friend, Congressman DAVID OBEY of Wisconsin, that he will retire from the U.S. House of Representatives. He has served with great distinction for the people of his district in Wisconsin since April 1, 1969.

He was elected to succeed Melvin Laird, who had resigned from the House to serve as Secretary of Defense. DAVID OBEY was reelected to 17 succeeding Congresses. In the House, he has chaired the Joint Economic Committee and the Committee on Appropriations. DAVID OBEY has had a career of distinction in the Congress. He has been conscientious in the discharge of his duties and responsibilities as a Congressman and he has been a good friend of mine.

I will truly miss working with DAVID OBEY on the Appropriations Committee. We dealt with some of the most contentious issues of our time. I always respected him even though we sometimes had to disagree on issues that were being considered by our committee.

He was a spirited and effective Member of Congress. I extend to him my very good wishes for the future.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I want to join my great friend from Mississippi, Senator COCHRAN, in his sentiments about DAVID OBEY.

I have known DAVE OBEY for 36 years. He had already been in Congress about 4 or 5 years when I got to meet DAVE, when I arrived in 1975. He is a wonderful individual, with deep passions. He was the best ally you ever had if he was on your side, and he was a frightening opponent if he was on the other side. Having been on both sides of an argument with DAVE OBEY, believe me, I much prefer having him an ally on issues.

He is a notorious workhorse who showed up every day with his sleeves rolled up to fight for not only the little guy in his own district in Wisconsin but for people all across the country. Working men and women never had a better ally in the Congress of the United States than they did in DAVE OBEY.

He did not spare any of his emotion or rhetoric when it came to the defense of that working man and woman in our country during his more than 40 years of service. He has great passion. Nothing he disliked more than a bully, and nothing ignited his temper more than any injustice.

He loved his State, his family, and enjoyed a great joke when we would spend time with him in various committees and the marking up of bills. He and I worked together. We were involved, when in my earliest days in the House I was a strong backer of Richard Bolling from Missouri to be majority leader back in 1976 I think it was.

Gillis Long of Louisiana and I were the comanagers of Richard Bolling's campaign to become majority leader when Tip O'Neill was going to become Speaker and there was a contest over the majority leader's race.

The other great ally in that effort was DAVE OBEY of Wisconsin. That is when I first got to know DAVE, in that battle for the majority leader. We lost that battle. Dick Bolling did not make it. Jim Wright became the majority leader in a very close contest, in fact, with Phil Burton of California. It was a 1-vote margin that determined the majority leader's race.

Richard Bolling dropped out after the second ballot, did not get enough votes. But DAVE OBEY and I and Gillis Long and a group of others organized to support Richard Bolling. That is when I got to know DAVE. I was with him about a couple of weeks ago. ROSA DELAURO, the Congresswoman from the New Haven district in Connecticut, my former campaign manager, chief of staff for 7 years, was only the second woman to be the Chief of Staff of a Senator of the United States. She served with me for 7 years and went on to become a Member of Congress for the last 20 years herself.

ROSA sits on the Appropriations Committee and chairs the Agriculture Subcommittee. DAVE OBEY was at that event for Congresswoman DELAURO and gave some wonderful remarks on behalf of her that evening.

I join THAD COCHRAN in wishing DAVE the very best. He served his State, his district, and his country with distinction and great patriotism. We wish him the very best.

JUSTICE FOR NEVADA'S COLD WAR VETERANS

Mr. REID. Mr. President, I rise today to acknowledge an important achievement for Nevada's Cold War veterans and their families. These individuals served their country at the Nevada Test Site, where over one thousand nuclear weapons detonations took place over four decades of nuclear testing. The work at the Nevada Test Site, NTS, helped America win the Cold War, but it also left thousands of workers with debilitating cancers. Beginning today, many of these workers will now be eligible for automatic compensation, putting an end to years of bureaucratic nightmares and redtape.

On February 19, 1952, the Nevada Test Site was created to serve as the Nation's nuclear test site. 174 atmospheric and underground tests were performed there before the Limited Test Ban Treaty of 1963 banned all atmospheric, space, and sub-sea nuclear weapons testing. Another 754 tests were completed before the United States established a moratorium on nuclear weapons testing in 1992. The vast majority of testing in this period took place underground, in a network of tunnels and shafts, although some nonweapons nuclear testing continued to take place above ground. Even though these tunnels were designed to contain the radiation produced by the tests, most of the underground detonations did release radiation that reached NTS workers.

In 2000, after a number of my colleagues and I had begun to hear disturbing stories from our constituents about illnesses they had gotten from their nuclear weapons work and their inability to get any financial compensation from the government, we introduced and passed the Energy Employees Occupational Illness Compensation Act. This legislation was designed to allow thousands of America's Cold War veterans who had worked for the Department of Energy to receive compensation that would not only help pay their medical bills but would also honor the sacrifices they and their families had made for their country.

Unfortunately, it soon became clear that even with this new law, it would not be easy for many workers to get the compensation they deserved. In 2005, I began to hear from workers and survivors complaining that they were being put through a seemingly endless stream of bureaucratic redtape only to be denied in the end. I heard stories about workers who were encouraged to remove their radiation detection devices so that they could continue to work even after reaching the maximum allowable radiation levels, yet their records showed zero radiation exposures year after year. I was enraged that these workers were denied compensation simply because their employer failed to keep an accurate account of how much radiation each worker was exposed to, so I embarked upon a three-pronged strategy to add