

June 10, 2015

To: Members of the House Judiciary Committee

From: James Ballentine, Executive Vice President, Congressional Relations & Political Affairs

Re: Support Issa-Chu amendment to extend duration of Covered Business Method (CBM) Program

On behalf of the members of the American Bankers Association (ABA), we are writing to express our strong support for an amendment being offered by Representatives Darrell Issa (R-CA) and Judy Chu (D-CA) during consideration of H.R. 9, the Innovation Act. This bipartisan amendment would extend the duration of the Covered Business Method Program by six years.

We commend the Judiciary Committee for moving the bill forward in an open and deliberative process which we believe will yield further refinements that strengthen the bill during mark-up and before going to the Floor.

Before the introduction of H.R. 9, we identified two priorities for the committee: (1) the need for greater detail and transparency in demand letters where financial services firms and others are the target of patent troll activity; and (2) a reasonable extension of the Covered Business Method Patent program (CBM). The Issa-Chu amendment would address the second issue, and is of critical importance to our members.

The CBM program is working well. The limited scope of eligible patents is permitting the Patent Office to review true business method patents while keeping technological inventions out of the program. Moreover, the rigorous gatekeeping around the petition and proceeding process, such as the requirement that the patent subject to CBM be asserted in litigation or a threat of litigation and the need to demonstrate that a patent is more likely than not invalid in order for a CBM review to be commenced, prevents petitioners from abusing patent holders or consuming Patent Office resources for collateral business benefits.

CBM is the only viable tool for quickly, efficiently and cost-effectively evaluating covered business method patents for subject matter eligibility or in light of the use and sale prior art. Without CBM, the federal judiciary is the only vehicle for subject matter eligibility and use and sale prior art to be applied to currently issued business method patents. Invalidity based on subject matter eligibility and use and sale prior art are the most common grounds for challenging low quality business method patents. Without CBM, industries that are alleged to have infringed a covered business method patent are effectively cut out of post grant review while other industries, that do not predominantly rely on subject matter eligibility or use and sale prior art, will continue to enjoy a faster, cheaper and more efficient alternative to district court litigation through Inter Partes Review proceedings. To ensure Patent Office review remains available equally to all industries, CBM should be extended.

June 10, 2015

Page 2

We strongly support the adoption of the CBM extension amendment during the Committee mark-up of H.R. 9.

We also believe more needs to be done by the Committee to address abusive demand letters, particularly against community banks and credit unions. We look forward to continuing to work with you and the Committee to ensure inclusion of meaningful demand letter reform as the bill works its way to the House Floor.

Thank you for your consideration.