



TO: Members of the ICOC

FROM: C. Scott Tocher, Deputy General Counsel

DATE: April 8, 2016

RE: Amendment to Loan Administration Policy to Permit Conversion to Grant

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### **Executive Summary**

In September of last year, the ICOC began the process to amend the Loan Administration Policy ("LAP") to permit a forgiven loan to be converted to a grant. That action was taken on the recommendation of the Intellectual Property and Industry Subcommittee of the Board, which met prior. The regulatory adoption process necessary to promulgate that amendments has now entered the final phase, having completed the posting and public comment phase. *The proposed amendments are unchanged from the version approved by the Subcommittee and Board in September and no public comment opposing the amendment was received. CIRM requests final Board approval of the amendments to conclude the amendment process.*

### **Background**

On September 3, 2015, the Intellectual Property and Industry Subcommittee of the Board met to consider an amendment to the Loan Administration Policy ("LAP") to permit a loan recipient whose loan has been forgiven by CIRM to elect to convert its loan to a grant, thereby extinguishing its obligations under the Loan Administration Policy and accepting the revenue sharing obligations of a grantee. The Subcommittee unanimously recommended approval of the proposed amendment and the Board at a subsequent meeting approved initiating the rulemaking process to accomplish the amendment.

### **The Amendment**

Beginning in early 2009, CIRM supplemented its grant funding by offering research loans to organizations. The Loan Administration Policy covers the procedures that apply to such loans. The LAP distinguishes between loans that must be repaid only in the event the CIRM-funded project is successful ("product-backed" loans) versus loans that must be repaid regardless of the success of the project.

In the event that the CIRM-funded project is not a successful, a Product-Backed Loan is automatically forgiven if, among other things, the loan recipient complies with reporting requirements and abandons the project. Under these circumstances the loan recipient's obligation to repay the loan is extinguished. However, a loan that has been forgiven will automatically be reinstated in the event that the loan recipient obtains revenue arising in whole or in part from the CIRM-Funded Project. If the Loan Recipient's obligation to repay has been forgiven and if further activity results in a repayment obligation, the Product Backed Loan will automatically be reinstated under terms that the Intellectual Property and Industry Subcommittee approves. Because of this springing obligation, a loan recipient whose loan has been forgiven may be required to continue to carry the loan as a liability on its books indefinitely.

To provide clarity regarding future obligations, CIRM proposes giving existing loan recipients whose loan has been forgiven by CIRM the option to convert their loan to a grant and forego reinstatement of a forgiven loan (see page 16 of the attachment). In this way, loan recipients will be automatically governed by the revenue sharing (and other) principles of the agency's intellectual property regulations in the event future revenue streams are realized. This will be particularly important in the event future revenues are realized after CIRM has exhausted its funding.

**Recommendation:** Approve final language to amend the LAP to authorize a loan recipient whose loan has been forgiven to convert the loan to a grant.

Attachment