HONDA

April 24, 2020

TO OUR VALUED Honda Suppliers:

The COVID-19 pandemic affects all of us. Honda recognizes that some of its suppliers may benefit from federally available funds and wants to assist in helping our entire supply chain understand and access these loans where appropriate. To that end, Honda is reaching out to its valued suppliers to provide currently available, federal guidance.

The nuts and bolts regarding small business loans (including *forgivable* loans) available under the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") are detailed below.[1] If you are an eligible supplier, you may well benefit from a fully forgivable loan to make payroll and to pay other allowable expenses. As we weather this storm, Honda is committed to collaborating together to utilize these resources, helping each other stay afloat and rebound as quickly as possible.

CORONAVIRUS AID, RELIEF, ANC ECONOMIC SECURITY ACT (THE CARES ACT)

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), which amends and expands the U.S. Small Business Administration's (the "SBA") flagship 7(a) Loan Program to create the Paycheck Protection Program (the "PPP"). Coupled with the SBA's pre-existing Economic Injury Disaster Loans (EIDL) program, these programs are offering small business loans with very attractive interest rates.

In addition to the above SBA loans for small businesses, the CARES Act contemplates programs to provide loans to larger businesses with 500-10,000 employees, including an Economic Stabilization Loan Program and the Main Street Lending Program.

WHO IS ELIGIBLE FOR A PPP LOAN?

The PPP ***expands*** the typical definition of who is eligible for these SBA loans to any business concern if they employ not more than the greater of (a) 500 employees; or (b) if applicable, the size standard for the business's industry. The PPP specifically provides that individuals who operate under a sole proprietorship or as an independent contractor and eligible self-employed individuals may be eligible under the PPP, even though they are not eligible for a traditional SBA loan. Further, the PPP waives affiliation rules for any business concern operating as a franchise that is assigned a franchise identifier code by the Administration and any business concern that receives financial assistance from a SBIC.

HOW DOES THE LOAN FORGIVENESS ASPECT WORK?

[1] The below is based on our current understanding and should not be a substitute for your obtaining independent legal advice as appropriate.

The CARES Act implements a **loan forgiveness** program for loans received under the PPP. A supplier may be eligible for loan forgiveness in an amount equal to the costs incurred and payments made ***during the eight week period following loan origination*** in the following categories:

- Payroll costs;
- Any payment of interest on any covered mortgage (which does not include any prepayment of or payment of principal on a mortgage obligation);
- Any payment on any covered rent obligation; and
- Any covered utility payment.

The forgiveness amount cannot exceed the principal amount of the loan. Additionally, recent guidance provided by the SBA notes that the forgiveness calculation echoes the allowable uses, and that 75% of PPP funds forgiven must have been used for payroll costs, while the remaining 25% may have been used for other allowable costs and expenses.

Suppliers seeking loan forgiveness must provide sufficient documentation verifying all employee and salary information. Lenders will be required to make a decision on forgiveness within 60 days of receiving a loan forgiveness application. Amounts forgiven under this section are considered canceled indebtedness by a lender authorized under 7(a) of the Small Business Act. For IRS purposes, any amount which would be includible in gross income of the eligible recipient by reason of loan forgiveness shall be excluded from gross income.

WHAT IS THE "COVERED PERIOD" FOR THE PPP LOANS?

These PPP provisions cover loans that are made between February 15, 2020 and June 30, 2020. So, for example, a loan made on June 29, 2020 may still be used beyond June 30th and would be eligible for forgiveness.

HOW LARGE ARE THE PPP LOANS?

The loan size will generally be 2.5x the applicant's average monthly payroll costs, with a maximum loan amount of $10 million. The formula is set out in greater detail in Section 1102(a)(1)(E) of the CARES Act.

CAN A SUPPLIER PAY NON-PAYROLL COSTS WITH THE PPP LOAN FUNDS?

Yes, to a point. Recent guidance provided by the SBA notes that to further the goal of maintaining payroll, the forgivable amount of non-payroll, allowable costs and expenses is capped at 25% of the loan. The funds may be used for any allowable costs but exceeding this percentage will affect the calculation of loan forgiveness.

Subject to this 25% cap, in addition to using the PPP funds for payroll costs, a supplier can generally use the PPP funds for: (a) Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums; (b) Employee salaries, commissions, or similar compensations; (c) Payments of interest on any mortgage obligation (which does not include any prepayment of or payment of principal on a mortgage obligation); (d) Rent; (e) Utilities; and (f) Interest on any other debt obligations that were incurred before the covered period, while still maintaining the benefit of loan forgiveness.

WILL THE SUPPLIER'S LOAN FORGIVENESS AMOUNT BE AFFECTED IF ITS BUSINESS EXPERIENCES LAYOFFS?

The loan forgiveness amount will be reduced based on employee and salary reductions, but the PPP makes exemptions for that reduction if a supplier re-hires its employees or eliminates the salary reductions by June 30, 2020.

To calculate the amount to be forgiven as reduced based on employee reduction, the PPP uses the following formulas:

- ***Non-seasonal employers*** - Forgiveness amount x (the average number of FTE employees per month between February 15, 2020 and June 30, 2020 ÷ the average number of FTE employees per month between [February 15, 2019 and June 30, 2019 **or** January 1, 2020 and February 29, 2020 at the election of the borrower]).

- ***Seasonal employers*** - Forgiveness amount x (the average number of FTE employees per month between February 15, 2020 and June 30, 2020 ÷ the average number of FTE employees per month between February 15, 2019 and June 30, 2019).

The loan forgiveness amount will also be reduced by the amount of any reduction in total salary or wages of any employee that is in excess of 25% of the total salary or wages of the employee during the most recent full quarter before the covered period. This does not apply for individuals who, in any single pay period, received wages at an annualized rate of pay over $100,000.

WHAT HAPPENS TO LOAN AMOUNTS THAT ARE NOT FORGIVEN?

For covered loans that have a remaining balance after the loan forgiveness reduction, the remaining balance is guaranteed by the SBA; the loan will have a two-year maturity date; and the interest rate will be 1%. There is no prepayment penalty for covered loans. The PPP also provides for no debt service payments for six months.

WHAT IS THE PROCESS FOR OBTAINING A PPP LOAN?

Some lenders have accepted applications for PPP loans as early as April 3 for businesses and will be accepted beginning April 10 for independent contractors and sole proprietorships. Applicants should contact a participating lender to determine the details of the application process. The PPP permits the government to expand the number of lenders under this program (for example, PayPal was just approved on April 6th), and allows those lenders to make and approve loans, including determining borrower eligibility. In evaluating eligibility, the lender is required to consider, among other factors, whether the borrower was in operation on February 15, 2020.

As part of the application, an applicant must make a good faith certification:

- That current economic conditions makes the loan necessary to support ongoing operations;
- That funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;
- That the recipient does not have an application pending for a loan under this subsection **for the same purpose** and duplicative of amounts applied for or received under a covered loan; and
- That between February 15, 2020 and December 31, 2020, the recipient has not received amounts under this subsection **for the same purpose**.

The PPP waives several typical SBA loan requirements, including the requirement that a small business concern is unable to obtain credit elsewhere (the "credit elsewhere" requirement) and the personal guarantee requirement.

CARES ACT'S EXPANDED ACCESS TO EIDL LOANS (WITH UP TO $10,000 GRANT)

Separately, suppliers may be eligible for small business Economic Injury Disaster ("EIDL") loans for longer-term loans with attractive loan terms. Although EIDL loans do not have the forgivable loan aspect that exists for a PPP loan, entities eligible for an EIDL **may request an advance of up to $10,000 (a grant)** anticipated to be paid within 3 days of application to cover allowable working capital needs, which ***advance does not have to be repaid*** (but is deducted from any loan forgiveness amounts under a PPP loan to avoid a double dip).

Under the CARES Act, EIDL loans cover a longer period than the PPP forgivable loans: the period between and including January 31, 2020 and December 31, 2020. Similar to the PPP loans, eligibility is expanded under CARES; in addition to a entities previously eligible (businesses with not more than 500 employees, private nonprofit organizations and small agricultural cooperatives), sole proprietorships, independent contractors, and ESOPs, cooperatives and tribal small business concerns with not more than 500 employees are eligible.

To qualify for an EIDL loan under the CARES Act, the covered entity must have suffered "substantial economic injury" tied to COVID-19. EIDL loans are up to $2,000,000, and the loan calculation is premised on actual economic injury as determined by the SBA, minus recoveries such as insurance proceeds.

As noted above, the CARES Act contemplates that both the PPP and EIDL loans may be issued to the same borrower provided that they are not used **for the same purpose** and **duplicative of amounts** applied for or received under the other covered loan. So, for example, although an EIDL loan can also be used for payroll costs and other allowable uses, if the borrower also has a PPP loan, it would be advisable to use the EIDL for other, non-PPP eligible purposes, such as to cover increased costs due to supply chain interruption or to pay obligations that cannot otherwise be met due to revenue loss. Alternatively, depending upon the borrower's needs, given the longer period covered by an EIDL, there may well be instances in which a supplier choses to solely apply for an EIDL loan (with grant that is not repaid) rather than apply for a PPP loan at all.

EIDL loans have up to a 30-year term, and the interest rate on EIDL loans is 3.75% fixed for small businesses and 2.75% for nonprofits. Unlike a PPP loan, a credit check is required on owners of 20% or more, and for an EIDL loan over $25,000, collateral may be required. Applications for EIDL loans should be submitted directly to the SBA at https://covid19relief.sba.gov/#/, as distinguished from the PPP loan application through an SBA-approved lender or other lenders as discussed above.

SBA PROGRAMS RELATED TO PPP AND EIDL LOANS

Alongside the PPP and EIDL loans, the SBA offers two programs to work in tandem with these loan programs to allow additional relief. First, the SBA Bridge Loan Program provides loans up to $25,000 to small businesses who currently have a business relationship with an SBA Express Lender. This loan is intended to bridge the gap while an EIDL applicant is waiting to receive EIDL funds. This loan is secured and is subject to the credit elsewhere requirement. The interest rate is up to Prime + 6.5% and the term is up to 7 years. Second, the SBA Debt Relief program provides that the SBA will make payments on outstanding SBA 7(a), 504 and microloans for six months and for those loans that are issued before September 27, 2020. This program does not include PPP or EIDL loans, however if you had an outstanding EIDL that was in regular servicing on March 1, 2020, the SBA will provide automatic deferments through December 31, 2020.

LOAN RELIEF FOR MID-SIZED BUSINESSES

As noted above, the CARES Act contemplates loans for businesses with between 500-10,000 employees in the form of Economic Stabilization Loans and the Main Street Lending Program. These loans are not eligible for forgiveness, and at least a subset of these loan programs have strings attached, including a requirement that the borrower remain neutral in any union-organizing effort for the term of the loan.

CONCLUSION

In sum, Honda and its suppliers share the common goal of infusing funds available from federally available, and potentially forgivable, loans into our automotive business chains to help keep everyone afloat.

Mark Willoughby
General Manager
Purchasing Division
Honda of America Mfg., Inc.

Hirofumi Yamamoto
General Manager
Purchasing Division
Honda of America Mfg., Inc.