On June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020 (the “Flexibility Act”) was signed into law with the purpose of making it easier for recipients of Paycheck Protection Program (“PPP”) loans to receive forgiveness of their indebtedness. The Flexibility Act makes the loan forgiveness process easier for borrowers through the following changes described below.¹

**EXTENSION OF PERIOD WITHIN WHICH TO OBTAIN AND USE A PPP LOAN:**

- The Flexibility Act extends the deadline for the use of PPP loan proceeds through December 31, 2020, provided, however, that the deadline to apply for a PPP loan remains June 30, 2020 (subject to availability of funds).

**EXTENSION OF REPAYMENT PERIOD:**

- The loan maturity date has been extended from 2 years to 5 years for all loans issued on or after June 5, 2020. For loans prior to that date, maturity can be extended with the mutual consent of borrower and lender.

¹ Please note this update is intended to address only major changes that will impact the average borrower and does not address every aspect of the Flexibility Act.
EXTENSION OF COVERED PERIOD:

- The Flexibility Act extends the covered period for use of loan proceeds from 8 weeks to 24 weeks following the loan origination date, provided that such extension shall not extend beyond December 31, 2020. Borrowers that have already received their loans may elect to use the original 8-week period; presumably, future guidance will instruct the borrower how this election can be made.

REDUCTION IN PAYROLL COST REQUIREMENT:

- Prior to the Flexibility Act, payroll costs had to constitute at least 75% of the loan forgiveness amount. Under the Flexibility Act, the amount of payroll costs must equate to at least 60% of the loan amount.
- However, please note that Treasury Secretary Mnuchin and SBA Administrator Carranza set forth an additional interpretation of this payroll cost requirement not found in the Flexibility Act in a joint statement released on June 8, 2020. This interpretation requires that a borrower use 60% of its loan proceeds and 60% of its loan forgiveness amount on payroll costs. Furthermore, the joint statement clarifies that if a borrower uses less than 60% of the loan amount for payroll costs, the borrower will continue to be eligible for partial loan forgiveness, provided that at least 60% of the loan forgiveness was used for payroll costs.

EXTENSION OF FTE REDUCTION SAFE HARBOR:

- The forgiveness for which a borrower may be eligible will be reduced in proportion to any reduction in the average number of full time equivalent (“FTE”) employees. To the extent that the borrower achieves the required number of average FTE employees by December 31, 2020, then the borrower qualifies for safe harbor and no forgiveness reduction would be triggered due to FTE employee count. This safe harbor date previously was June 30, 2020.
- The borrower, however, will be exempt from such reduction to the extent the borrower is able to document that:
  (a) The borrower is unable to rehire the employees who were employed on February 15, 2020, and it is unable to hire similarly qualified employees to replace them by December 31, 2020; or
  (b) The borrower is unable to return to the same level of business as of February 15, 2020, due to its compliance with OSHA, CDC, and HHS standards related to COVID-19.

2 Please note that the Flexibility Act did not address any similar modification to the wage reduction safe harbor. Clarification regarding any such change will hopefully be addressed in the revised loan forgiveness application.
**FORGIVENESS APPLICATION DEADLINE:**

- Borrowers have until 10 months after the end of their covered period to submit their forgiveness application. If no forgiveness application is made by such time, the borrower will be required to start making payments on the loan.

**EXTENSION OF DEFERRAL PERIOD:**

- For those portions of the PPP loan which are not forgiven, payments of principal, interest, and fees shall be deferred until after the forgiveness amount is determined and remitted to the lender by the SBA. If the borrower does not apply for forgiveness, the deferral is extended to 10 months after the borrower’s covered period.