

## Demonstrating Inability to Secure Adequate Credit

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In order to access credit under the Main Street Lending Program (MSLP), a borrower is required to certify that they are "unable to secure adequate credit accommodations from other banking institutions." The instructions and guidance make clear that this does not mean that no other credit is available for the borrower's purposes. The borrower is permitted to make the certification that they are unable to secure "adequate credit accommodations" if they are able to certify that the "amount, price, or terms of credit available from other sources are inadequate for the borrower's needs during the current and unusual exigent circumstances."

Beyond that guidance, the frequently asked questions (FAQs) provide that borrowers are not required to demonstrate that applications had been denied by other lenders, and further provide that borrowers are not required to "otherwise document that the amount, price, or terms of credit available elsewhere are inadequate."

While borrowers may not be required to document their determination to the Federal Reserve Board or the lenders in order to obtain credit under the MSLP, this guidance nevertheless falls well short of creating a presumption or a safe harbor. If the recent turmoil over the necessity certification in connection with the U.S. Small Business Administration's Paycheck Protection Program (PPP) is any indication, it is expected that this certification may be a continued focus of borrowers, lenders and the Federal Reserve.

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Information contained in this alert is for the general education and knowledge of our readers. It is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem. Moreover, the laws of each jurisdiction are different and are constantly changing. If you have specific questions regarding a particular fact situation, we urge you to consult competent legal counsel.

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