National Federation of Municipal Analysts

Recommended Best Practices in Charter School Disclosure (Primary Offering & Continuing Disclosure)

Draft of September 28, 2016; Comments Due November 30, 2016

EXECUTIVE SUMMARY

This RBP Disclosure is a statement of the principal disclosure items identified as Recommended Best Practices (RBPs) by the National Federation of Municipal Analysts (NFMA) regarding charter school debt offerings. Both the Preliminary Offering Statement (POS), Offering Statement (OS), and continuing disclosure are covered by this RBP. Part I is an overview that summarizes most (but not all) of the principal disclosure considerations associated with specific subject areas unique to charter school debt offerings. Basic offering statement disclosure regarding sources and uses, DTC, redemptions, litigation, ratings, and so on are not addressed in this RBP. A more detailed discussion of key charter school disclosure topics and concerns follows in the body of this RBP. Depending upon the factual context of specific offerings, certain subject areas or concerns may or may not be applicable to a particular charter school debt offering.

RECOMMENDED BEST PRACTICES SCOPE AND USAGE CAUTIONS

The recommendations contained in this RBP are not intended to be a thorough discussion and analysis of each state's specific chartering laws and process, charter school funding systems, state and federal laws regulating the education of students in general, or federal tax laws regarding the tax-exemption of charter school transactions. **Appropriate federal, state, and authorizer charter law disclosure is required in the POS so that investors obtain an adequate level of knowledge regarding the legal and regulatory program requirements needed to maintain the charter school and the attendant risks of non-compliance with such laws and requirements (e.g., charter revocation).**

INTRODUCTION

Since its inception in 1983, the National Federation of Municipal Analysts (NFMA) has been at the forefront of efforts to improve the disclosure of credit and market risks facing analysts and investors in the taxable and tax-exempt municipal bond markets. The NFMA is an organization of nearly 1,400 members, primarily research analysts, who evaluate credit and other risks of municipal securities. These individuals represent mutual funds, insurance companies, broker/dealers, commercial banks, and rating agencies, among other stakeholders. The NFMA's disclosure efforts have addressed broad areas of concern, ranging from industrywide topics to detailed work on specific credit sectors. Some of this work has been communicated to members of Congress and federal regulatory agencies, and it has been recognized by other industry associations and by various regulatory bodies. An amicus brief filed by the NFMA with the US Supreme Court in *re Davis v Kentucky* was cited by the Court in support of their decision in that case. For further information on continuing efforts to improve municipal disclosure, please refer to the "Disclosure Guidelines" and "Position Statements" in the "Publications" section of the NFMA's website (www.nfma.org).

The NFMA communicates sector-specific recommendations primarily through white papers and Recommended Best Practices (RBPs) in Disclosure papers. White papers are the NFMA's preferred method of comment when the disclosure recommendations have not previously been articulated in a detailed or organized manner. As a rule, white papers are written by a team of NFMA members who represent different types of companies.

RBPs, on the other hand, are used when a particular analytical topic has previously been subjected to thorough discussion. In developing RBPs, diverse groups of NFMA analysts work with representatives of industry groups and other market professionals to develop best practice guidelines on certain market sectors or topics.

This document is intended to complement, rather than supplant, guidance provided by Securities and Exchange Commission (SEC) Rule 15c2-12 or Rule 2a-7 and its amendments.

The NFMA RBPs in Disclosure are not intended to be one-size-fits-all recommendations. All the information requested may not apply to every transaction in the sector. We encourage the providers of information to indicate when a specific item requested in the RBPs is not applicable to a specific transaction.

It is important to note that the NFMA's disclosure efforts are a continuing process. These guidelines are not static documents: they will be revisited and changed as market conditions warrant. The NFMA encourages interested parties to submit comments at any time to Lisa Good at lgood@nfma.org so that they can be considered in the development of future versions of all RBPs in Disclosure.

PART I: OVERVIEW OF KEY CHARTER SCHOOL POS DISCLOSURE ITEMS

Part I of this RBP presents an overview of the areas covered in more detail in the later parts of the paper. It includes elements of the structure of the deal, government standards, financial stability, and facility provisions.

DEAL STRUCTURE AND MATERIAL DOCUMENTS

The POS should disclose all important terms, covenants, and documents involved in the proposed charter school financing. These include the proposed indenture, loan agreement, facility lease(s), mortgage(s), appraisal, charter contract, third-party management contract, third-party enrollment projections/market demand studies, latest audited year-end financial statements, latest interim financial statements, current budget, state aid intercept agreement, environmental reports, construction contracts (with budgets and draw timetables), and any other material agreements affecting the future financial strength, operation, and success of the charter school and its pledged assets.

CHARTER AND SPONSORSHIP DISCLOSURE

The POS should disclose the terms and limitations of the charter school's charter, including renewal and termination provisions; it should also disclose the sponsor's oversight of the charter school and the current state of the relationship between the charter school and its authorizer.

FEDERAL AND STATE EDUCATIONAL PERFORMANCE STANDARDS AND CHARTER RANKINGS

The POS should disclose the applicable federal, state, and sponsor's student testing and performance standards applicable to the charter school with comparisons or rankings with competing charter and public schools per grade; the charter school's educational assessment, testing, and remediation programs; and any pending changes in student performance standards. The POS should also disclose the charter school's curriculum and educational programs at all grade levels, and the degree to which such programs satisfy applicable authorizer, sponsor, and state and federal requirements.

CHARTER MANAGEMENT AND STAFFING DISCLOSURE

The POS should disclose the charter school's history and present organizational structure; disclose the identity of its board members and their experience and credentials, its principal administrative officers and their experience and credentials; and discuss its teaching staff and their experience and credentials. The POS should also disclose any third-party management organization for the charter school as well as the scope of that management's role along with the experience and credentials of the third-party manager.

FINANCIAL INFORMATION, PLEDGED REVENUES, DEBT SERVICE COVERAGE RATIO, AND FUTURE FINANCING NEEDS DISCLOSURE

The POS should disclose, in tabular form, the charter school's revenues and expenditures for the past five years (or shorter period of existence); the charter school's audited financial statements for the past three years (or for its entire period of existence, whichever is shorter); year-to-date comparison of actual results to budgeted results; and cash flow projections for the upcoming three years. Charter schools usually pledge their gross revenues (*pledged revenues*) to pay debt service, which will include their state per pupil aid. The POS should disclose all items of pledged revenues, the timing of state aid receipts in relation to enrollment, and should set forth annual debt service coverage ratios (DSCR) projections through the maturity of proposed bonds. The POS should also disclose the charter school's capital funding programs, budgeting process, liquidity plan, outstanding and planned indebtedness, terms of any outstanding debt, the identity of existing lenders and investors, material lease obligations, the school's endowment(s), and the school's access to state-sponsored, bank, or third-party manager cash flow funding if needed.

CHARTER SCHOOL FACILITY SUITABILITY AND FUTURE CAPEX DISCLOSURE

The POS should disclose the location, age, and suitability of the charter school's buildings ability to serve the current and projected student enrollment and its educational and athletic programs (the *facility*). The POS should also disclose the charter's capital budget and the amount of any reserves needed to maintain the facility, the scope of its property and liability insurance coverage, and the charter school's student busing programs, its parking capacity, its access to athletic facilities, and its security systems.

ENROLLMENT, SERVICE AREA, AND COMPETITION DISCLOSURE

The POS should disclose the charter school's service area in relation to its student population, and disclose the school's competition (public, private, and charter schools) within that service area, with a discussion of the locations, enrollments, missions, students served, academic performance, and tuition of its competition. The POS should also disclose any third-party feasibility and market demand studies (*expert reports*) received on behalf of the charter school used by the school or its underwriters in preparing the POS.

CHARTER CREDIT SUPPORT, BANK LOANS, AND STATE INTERCEPTS DISCLOSURE

The POS should discuss the terms of any credit and liquidity support needed by the charter school (including existing or proposed bank loans, state aid notes, and capital leases), and the charter school's participation in any state aid intercept programs and their operation. State credit support can include state guarantees, state moral obligation programs, and state aid anticipation note programs.

NEW FACILITY ACQUISITION AND CONSTRUCTION DISCLOSURE

The POS should disclose the facility to be acquired/renovated and the rationale for acquiring or remodeling the facility, and disclose the construction budgets/draw schedule, general contractor and architect experience and qualifications, construction draw requirements, guaranteed maximum price contracts, the presence of completion and performance bonds, and the charter school's business interruption insurance. For the acquisition of an older facility, the POS should disclose the results of a physical needs assessment as well as who made the assessment. Finally, the POS should disclose how the purchase price was determined and the results of any appraisals.

PART II: CHARTER SCHOOL PRIMARY MARKET OFFERING DISCLOSURE

Part II, on primary market offering disclosure, presents elements concerned with financing and the charter school's facility—both in terms of the physical structure and in terms of its staffing—as well as the context in which the charter school in located (its competition, region, and resources).

BOND FINANCING TERMS AND DOCUMENT DISCLOSURES

1) *Key POS Bond Financing Disclosure*

The POS should disclose all material financing agreements such as proposed indenture, loan agreement, capital leases, management agreements, mortgages, tax regulatory agreements, appraisals, environmental reports, construction contracts, state intercept agreements, and the like. In addition, the POS should disclose all of the following bond and charter school financing points: (1) the type of facility being financed (new building acquisitions, retrofitting or expanding an existing building that is already owned outright, and long-term leased facilities); (2) the structure of asset financing (loan structure, lease structure, sub-lease structure, etc.); (3) the sources and uses of bond funds and amounts contributed or expected to be contributed by others (including any equity contributed by the charter school); (4) pledged revenue description including scope of pledged revenues, real estate collateral, and other pledges and collateral such as state aid intercepts; (5) reserve funds including debt service reserve funds, repair and replacement reserves (*R&R reserves*), operating deficit reserve funds, insurance and property tax reserves, and their replenishment sources; (6) appraisals of real estate and leasehold interests within the last five years; (7) board member, management, and teacher experience, years of service, compensation, and credentials; (8) construction budgets, construction draw requirements, and construction monitoring procedures and construction draw requirements; (9) projected school cash flows and DSCR projections; (10) educational achievement test scores and rankings per grade with a comparison with the charter school's competitors; (11) the charter school's enrollment trends and wait lists per grade; and (12) material provisions from the indenture, loan, lease, and construction documents, including financial covenants; pre- and post-default waterfalls, optional and mandatory redemption provisions; provisions relating to construction and acquisition fund disbursements; default provisions, and remedies. (NOTE: Specific disclosures and credit risks in new facility construction and financing are discussed in Part III below.)

2) *Financial and Other Covenant Disclosure*

The POS should disclose all material covenants included in the indenture, loan agreement, lease agreement, and other material agreements supporting the transaction such as required DSCR, number of days of cash-on-hand, leverage ratios, fixed charge coverage ratios, additional debt restrictions, financial reporting requirements, and insurance requirements. These covenants should be excerpted from the applicable agreement and contained in the POS.

COLLATERAL DISCLOSURE: BOND TRUSTEE'S RIGHTS IN PLEDGED REVENUES REAL ESTATE COLLATERAL AND STATE AID INTERCEPTS DISCLOSURE OF REMEDIES AGAINST COLLATERAL

Because charter school financings traditionally rely on some form of a gross revenue pledge and a mortgage on the charter school's facility to secure repayment of the securities, appropriate POS disclosure and discussion is required to evaluate the adequacy of the collateral documentation and the trustee's perfection of its interest in pledged revenues, leasehold assignments, and equipment security interests.

Bondholders generally require the bond trustee to obtain either an insurable first mortgage on a charter's owned facility or an insurable leasehold mortgage on the charter's leasehold facility with a collateral assignment of the underlying ground lease. The POS should disclose the nature of title insurance to be delivered to the trustee plus any material easements, use restrictions, zoning limitations, and the like. The POS should disclose whether there is an American Land Title Association (ALTA) survey that discloses encroachments, locations of private easements, location/set-back of the building, and egress-ingress concerns. When facility leases or ground leases are present, the POS should disclose the length of the leasehold, lease payments, lease defaults, and lease termination rights, and whether lessor assignment consents have been provided to the bond trustee. The POS should also disclose the exact nature of the bond trustee's rights and remedies respecting these assigned leases including the right to "re-lease" the facility to another tenant without lessor approval. Finally, the POS should disclose whether the lessor is related to any other party to the financing transaction or to the charter school's governing body, administration, or management organization (or officers or owners thereof). See also the NFMA's *White Paper on the Disclosure of Potential Conflicts of Interest in Municipal Finance Transactions* (2015).

A UCC-9 security agreement is necessary to obtain a security interest in pledged revenues, equipment, fixtures, inventory, deposit accounts, and general intangibles of a charter school. The POS should disclose the scope of the UCC-9 security interest (e.g., does it cover the charter school's accounts, receivables, equipment, fixtures, inventory, depository accounts, general intangibles, etc.) and who is responsible for making the appropriate UCC financing statement filings. UCC-9 perfection and priority rules are complex (especially regarding cash, bank deposits, investments, and other "revenues" that support the lifeblood of the charter school), and the bond trustee is not required to verify proper UCC collateral perfection and priority. For example, if the charter school maintains bank accounts, deposit accounts, or investments at a bank (as opposed to the bond trustee), the bond trustee may not have a properly perfected lien on the assets without a depository control agreement.

State aid intercept programs are also a key to certain charter school financings. Consequently, the mechanics of the charter school's state aid intercept program and the key provisions of the state aid intercept documentation should be disclosed in the POS.

FACILITY DISCLOSURE

1) *Size, Capacity, and Condition of Facility Disclosure*

The POS should identify and describe the charter school's existing or proposed facility and location(s). The POS should include in its appendices any boundary survey, site plan, and individual floor plan information showing numbers of classrooms, classroom sizes, room configurations, parking resources, and other significant facility components, which can be valuable tools for analysis of the charter school's ability to grow organically to meet enrollment expansion. The POS should discuss the age and condition of the charter school's facility and the adequacy of the facility and campus (including the facility to be constructed or acquired) to serve existing and future student population. The POS should disclose any physical needs reports that address the condition of the roof, basement (if any), and supporting walls and other major building components, as well as any reports that discuss the age, condition and adequacy of major equipment (e.g., heating, ventilating, and air conditioning) to serve the facility. Furthermore, the POS should disclose the date of these physical needs reports and should disclose whether or not any more recent physical needs assessments have been undertaken. The POS should disclose the sizes of classes of the charter school, the square footage of the rooms in the charter school's facility, and the adequacy of the rooms to accommodate anticipated enrollment. The POS should disclose the nature and adequacy of classrooms; administrative offices; teacher lounges; lunch rooms and kitchen or food preparation areas; auditoriums; specialized facilities for music, art, and other enrichment programs; athletic facilities; and the maximum enrollment capacity of the current and proposed facility for each grade level.

2) *Future Capital Improvements Needs: Capital Expenditure Budgeting and Replacement Reserves Disclosure*

The successful long-term operation and maintenance of the charter school's facility is important to the success of the charter school. Traditional concepts of replacement reserves, operating reserves, and property tax reserves should be employed to preserve the value of the underlying real estate asset. In any school, fixtures, furniture, and equipment (FFE) undergoes significant use and abuse. Consequently, the POS should discuss the charter school's ability to maintain its FFE to ensure its satisfactory functioning. The POS should discuss the school's capital expenditure (CAPEX) and FFE replacement program as well as its future FFE needs, plus the charter school's planned use of capital leasing versus cash purchase of future FFE. Although the charter school can fund CAPEX and FFE using the R&R reserve fund, the R&R reserve should not be the sole source of CAPEX and FFE funding because it may diminish the charter school's ability to fund emergency CAPEX replacement/repairs where insurance is unavailable or delayed. Finally, the POS should disclose whether the bond documents will require periodic updates of the charter school's CAPEX and FFE budget that identifies the source of funding for the future CAPEX and FFE.

3) *Property, Business Interruption, and Other Insurance Support: Claims History Disclosure*

The POS should disclose the bond document's requirements for the charter school's property, casualty, liability, rental, flood, workers' compensation, and business interruption insurance coverage, plus directors' and officers' liability insurance coverage for board members. The POS insurance disclosure should describe the coverage amount for existing property, business interruption, flood, wind, earthquake, and other property insurance coverages, and should disclose any property damage and casualty insurance structured with high deductibles, high co-insurance requirements, or broad exclusions for insurable risks. Finally, the POS should disclose what property insurance is assigned to the bond trustee. The POS should also disclose the charter school's safety programs and safety record for the past five years including any material personal injury claims, insurance litigation, worker's compensation claims, or any health or safety investigations by regulatory agencies.

4) *Transportation, Parking, and Outdoor Facility Needs: School Security Program Disclosure*

The POS should discuss the charter school's existing transportation arrangements for students and whether the charter school or the home school district is responsible for the associated transportation costs. If the charter school uses busing, the POS should describe the number, type, capacity, and condition of the buses, the ownership and operators of the buses, and the distance the buses must go to pick up students, and routes used for transportation. The charter school's financial statements should include separate revenue and expense budget line items relating to the use or provision of transportation services for students. The POS should also disclose the existing teacher and student parking at the charter school (including its adequacy to accommodate future student and staff growth Lastly, the POS should disclose the nature of existing playground space and indoor and outdoor athletic areas and school ground security; and the charter school's funding of any changes or increases to such spaces to accommodate future enrollment growth.

5) *Zoning, Building Code, and Property Tax Exemption Disclosure*

The POS should disclose the facility's compliance with local zoning, building code and land use regulations, the date of its physical occupancy permit, and whether any material renovations or expansions of the facility were subject to new building code inspections and updated occupancy certificates.

SCHOOL CHARTERS: SPONSORSHIP, RENEWALS, ADMINISTRATION, AND REVOCATIONS DISCLOSURE

1) *Status of Existing Charter and Authorizer Oversight: Charter and Authorizer Limits on Future Growth and Supervision Disclosure*

The POS should disclose the nature, experience, organization, and legal status of the charter school's sponsor, and should describe key provisions of the charter school's charter and agreements with, and other requirements of, its sponsor as well as provide a full copy of the charter contract in the POS' appendices. The POS should disclose all significant contractual and regulatory provisions (and, if applicable, all by-law provisions) relating to authorizer oversight of and assistance to the charter school including governance and administration, and approval of the financing transaction. If a charter school does not conform to applicable charter provisions or authorizer requirements, the POS should disclose the non-conformity and discuss the potential impact upon, or consequences for, the charter school's continued existence and operations as well as plans to cure such non-conformity. The POS should also disclose any enrollment and grade limitations and conditions contained in the school's charter (e.g., class-size limits) and other restrictions on the charter school's operations and mission. If the charter requires amendments to accommodate the proposed transaction or the future expansion model of the school, the POS should address the status of those amendments and the risks of non-approval disclosed.

The POS should disclose the sponsor's ongoing review and supervision of the charter school, and the nature of any periodic reports the charter must furnish the authorizer, sponsor, and any other regulatory bodies. The POS should disclose any recent or ongoing inquiries by the sponsor or authorizer, and the charter school's timeliness and the completeness of all filing requirements with the authorizer and sponsor.

2) *Charter Renewal Process and Risks of Charter Termination and Non-Renewal Disclosure*

The POS should disclose the process and requirements for renewing a school's charter, including the frequency and timing of renewal applications and approvals. The POS should also disclose the process of revocation or nonrenewal of the charter, and the conditions under which termination or revocation of the charter would be triggered. If the school's charter contract has not been formally renewed within the prior six months and the school is seeking debt financing, the POS should disclose whether the sponsor of the charter school has been requested to provide some form of "good standing" letter indicating that the charter school is in compliance with the terms of its charter and/or that the authorizer is not currently taking any adverse actions against the charter school that would result in a charter revocation or termination. The charter school should provide some form of a good standing letter with the POS.

3) *Authorizer Financing Approvals and Limits on Charter School Financings Disclosure*

The POS should disclose any state, authorizer, or regulatory requirements regarding the charter school's proposed financing and pledging of pledged revenues/state aid. The POS should disclose the status of the authorizer's and regulator's knowledge and required approval of the proposed charter school financing; this should include any proposed lease and asset purchase transactions with third parties. Charters can be subject to termination or revocation based on undisclosed conflicts of interest in charter school financings. See the NFMA's *White Paper on the Disclosure of Potential Conflicts of Interest in Municipal Finance Transactions* (2015).

DISCLOSURE OF STATE AND LOCAL REGULATION OF CHARTER SCHOOL ACADEMIC PERFORMANCE

A charter school's academic performance has been identified as an especially important factor in charter school long-term stability and success. Consequently, the POS should disclose all relevant aspects of the charter school historic academic performance, including the following items: (1) the identify of each regulatory authority having jurisdiction with respect to the charter school's academic operation, curriculum, and student performance; (2) the nature of applicable federal, state, and local school district academic regulations and standards, and the charter school's historic and present compliance with such regulations and standards; (3) the charter school's history with those regulatory authorities, including any adverse actions or notices regarding the provision of educational services, educational testing, teacher efficacy, teacher qualifications, class sizes, special-needs programs, staff management deficiencies, and the like; and (4) the existing and proposed federal, state, and local school district testing or student assessment criteria or methodology (e.g., Common Core State Standards), along with the charter school's written plans to meet and exceed those academic standards and achievement levels.

The POS should disclose the charter school's curriculum and educational programs at varying grade levels, including the degree to which the curriculum satisfies applicable state, authorizer, and federal requirements and standards. The POS should address the specific content sequences and examples of curriculum used (e.g., Core Knowledge State Standards sequence; Saxon or Singapore Math, Shurley English, etc.). The POS should disclose the charter school's use of routine assessment testing and implementation of remediation activities within the classroom, including the frequency of the formalized assessment activities throughout the school year and the assessment tools (e.g., Northwest Evaluation Association, or NWEA) used to measure academic growth during the school year. The POS should present all applicable standards and performance criteria in a format that allows year-over-year comparisons of the charter school's historic results to be easily understood by investors, and should include "peer" comparison data with both the local school district schools and relevant competing charter schools and private schools.

SCHOOL STAFF AND MANAGEMENT INFORMATION DISCLOSURE

It is crucial to make disclosure about school staff and management easily accessible. This includes information about the board as well as teachers and other staff, as well as any formal written complaints.

1) *Charter Board Membership, Compensation, and Tenure: Conflicts-of-Interest Policy Disclosure*

   The POS should disclose the charter's board of directors' identity, qualifications, and tenure, as well as the criteria and processes used to identify, nominate, and select members of the charter school's governing body. The POS should also identify the board's policy for board member recruitment and retention, compensation, and benefits, if any, received by members of the governing body, and the board's conflicts-of-interest policy.

2) *Website and Public Reporting Documents Disclosure*

   The POS should identify the charter school's website and identify what documents are posted to it. The POS should disclose what documents the charter school files publicly with its authorizer, sponsor, and other regulatory bodies, and a copy of the most recently filed documents should be provided in the POS appendices.

3) *Management Qualifications, Experience, and Compensation Disclosure*

   The POS should disclose provide the names, titles, qualifications, education (including degrees received), experience, responsibilities, and the compensation (including benefits) paid to charter school's management staff plus any recent disciplinary matters involving any member of the management staff or the teaching staff.

4) *Third-Party Manager Control, Compensation, and Replacement Disclosure*

   If the charter school relies upon a third-party management organization for accounting, educational, staffing, or other management, the POS should disclose identity of the third-party manager and the history of its relationship with the charter school. The POS should disclose all the provisions of the contract(s) between the management organization and the charter school. The POS should disclose the extent to which the charter school relies exclusively or primarily on a third-party manager for day-to-day fiscal and operational matters, and the potential risks associated with manager loss (e.g., manager contract termination, manager going-out-of-business, etc.). The POS should provide the qualifications and education experience of the manager's personnel working with the charter school, and the disclosure of the compensation paid to the third-party manager. The POS should disclose whether the third-party manager provides staffing or other services to the charter school through subcontractors, and the POS should identify those other contractors and/or subcontractors and roles they play. The POS should also discuss whether any of the manager's contractors and/or subcontractors (or their owners or officers) have potentially conflicting roles with the charter school (e.g., through any ownership in the charter school facility or any equipment leased to the charter school, or providing any form of financial support to the charter school). If such relationships exist, the POS should address potential conflicts of interest. See also the NFMA's *White Paper on the Disclosure of Potential Conflicts of Interest in Municipal Finance Transactions* (2015).

If the charter school is part of a larger charter school organization or is affiliated with other charter schools, the POS should disclose the larger umbrella organization or affiliation, disclose the umbrella organization's qualifications and experience, and disclose the number of charter schools that are part of the umbrella organization (including their locations, enrollments, attrition rates, graduation rates, years in service, and educational and fiscal performance data).

5) *Charter School Teaching Faculty, Classroom Ratios, and Teachers' Union Affiliation Disclosure*

The POS should disclose generally the qualifications, education, and experience of the charter school's teachers and support staff (e.g., classroom aides). It should also disclose the numbers of teachers serving multiple grade levels of the charter school and classroom teacher-student ratios by grade. The POS should disclose the experience of faculty serving specialty programs (e.g., art, music, speech, debate, physical education, and competitive athletics). The POS should disclose three years of historical retention rates for teaching faculty and staff by grade, and the incidence of teacher or faculty dismissals and voluntary leaves. Lastly, the POS should disclose whether there are unionized faculty and staff, and summarize the history and present status of union contracts, negotiations, disputes, and litigation.

6) *Teacher and Staff Compensation and Retirement Benefits Disclosure*

The POS should disclose compensation ranges for the charter school's faculty and staff, with comparisons with its competitors (public, private, and other charter schools). The POS should briefly describe the staff's retirement, health, vacation, sick leave, and other benefits, and the POS should address the charter school's funding of its annual pension and other postemployment benefit (OPEB) contributions.

If the charter school has more than one campus, the POS should discuss the campuses, locations, enrollments, attrition, graduation rates, missions, and degree of integration with the charter school organization as a whole. Unless particular campuses are not relevant in providing revenues for payment of or securing the securities or to the operations, educational performance, and financial condition and performance of the charter school as a whole, the information presented should take into account the entire charter school organization and should provide important information on a campus-by-campus basis. An important element of multiple-campus operations is transportation between campuses, the degree to which revenues and expenses are allocated between the campuses, and the extent to which a particular campus is not able to generate its share of adequate net operating income and the like. If the charter school anticipates expanding to additional locations, describe the anticipated locations, the intended missions and enrollments, planning stages in process, and parties involved in the planning.

7) *Charter School Complaints and Claims Disclosure*

The POS should disclose any litigation, disciplinary, criminal, or other legal and/or administrative proceedings involving the charter school, its board members, management, staff, or representatives (*disputes*). If any such disputes exist or have been threatened, the POS should disclose the nature of the dispute, current status, the amount of any monetary claims, insurance coverage, and any expected outcomes including regulatory actions by the authorizer, sponsor, regulatory authority, or board.

8) *School Athletics and Extracurricular Facility Use and Parent Organization Disclosure*

The POS should describe other significant operating and funding information that may affect the charter school's future success, such as the scope of its athletic programs, intramural sports programs, and after-school activities and its reliance on parent/community fundraisings and third-party use of the charter school facility for events to raise revenues. The POS should discuss the extent to which the charter school utilizes special after-school, vacation period, or summertime programs to generate additional revenues and discuss the charter school's policy for utilizing these "down" periods of the facility in the future. The POS should address the annual costs of the charter school's sports programs and after-school activities. If the charter school has been supported by parent organizations (after-school volunteers, etc.), the POS should disclosure the charter school's future reliance on such parental support.

CHARTER SCHOOL FINANCIAL AND BANKING DISCLOSURE

This section details different types of financial and banking disclosure, including sources of charter school funding.

1) *Audited Financial Statement and Interim Financial Disclosure*

The POS should disclose the charter school's audited financial statements for the past three years in its appendices, plus any management analysis and discussion and auditor's letter to management. If the school's financial statements are only compiled, this should be expressly noted in the POS because it presents a material credit concern. The POS should also summarize in tabular form the charter school's revenues and expenditures by significant revenue and expense categories for the last three years. If the audited financials were dated more than six months prior to the date of the POS, the POS should present unaudited year-to-date financial statements showing balance sheet, revenues, and expenditures. If the charter school is relying on future revenue growth to service its debt, the POS should present an annual cash flow statement for the next five years identifying projected annual DSCR and the charter school's projected amounts of cash, liquid investments, number of days of cash on hand, and net working capital (current assets less current liabilities). If the charter school has reason to believe the year-to-date financials may omit an upcoming material fiscal event or accounting treatment change (including any proposed loan or other financing), the POS should disclose that event or change. The auditors should have consented to the use of their audit report in the POS; if the consent of the auditors has not been obtained, the POS should disclose that information.

2) *Current Budget and State Aid Disclosure*

The POS should disclose the charter school's budgetary processes (including parties responsible, procedures, timing, and approval), and provide the charter school's budget for the current year, with a comparison of actual expenditures to budgeted expenditures from the end of the last fiscal year to a date within the prior thirty days. If those items have changed since that date, the POS should provide that information and describe the change.

The POS should disclose any projected changes to the charter school's revenue sources according to its most recent audited financial statements, including per pupil revenues received from state, local, or other sources; other state funds; federal funds; other revenues from charter school operations; grant funds; taxes levied in certain states; endowment; and any other sources. The POS should explain how state aid is calculated for a charter school in that state, and whether it is paid directly to the charter school or paid to the local school district. For those states where per pupil funding is determined by a student's "home" public school district, the POS should disclose the number of enrolled students from each school district and the projected levels of school district enrollment.

3) *Financial Covenant Compliance Disclosure and Projections*

In addition to audited financial statements, the POS should disclose the material financial, debt, and operational covenants contained in the bond documents. In addition, the POS should disclose the charter school's historic compliance with any material financial covenants such as debt service coverage ratios, number of days of cash on hand, leverage ratios, and fixed charge coverage ratios. If the bond documents contain any financial covenants, the POS should disclose the charter school's current compliance with such financial covenants and projected compliance for at least the next five years adjusted to reflect the effects of the proposed financing. The POS should disclose the preparer of such projections, the projection's material assumptions, and the charter school's affirmation of the assumptions reasonableness. See also the NFMA's *White Paper on Expert Work Products* (2011) regarding the use of and disclosure regarding financial projections.

4) *Existing Banking Relationships and Cash Flow Borrowing Disclosure*

The POS should describe the lines of credit available to the charter school, if any, and other banking relationships that support its cash flow and liquidity, including the use of any state aid anticipation notes (SANs) or temporary advances by third-party managers (e.g., payroll, etc.). Given the seasonality of revenues receipts for most charter schools and the need to fund monthly expenses throughout the year, a charter school's access to a bank cash flow borrowing or SANs is very important.

5) *State Student Aid Intercept and Moral Obligation Support Program Disclosure*

The POS should disclose existing state and other government fiscal support to be relied upon by the charter school. This support includes state aid intercept programs, earmarked local taxes, moral obligation programs, and other fiscal support programs (e.g., state-sponsored SANs). The POS should identify the parties that administer these credit support programs, the conditions of the charter schools' participation in these programs, the timing of payments by these programs, and the bond trustee's rights to funds paid to these programs for debt service.

6) *Future Debt Issuance, Capital Lease, and Service Contract Disclosure*

The POS should disclose the charter school's planned future debt (including bank loans, SANs, and capital leases) and all material service contracts needed to meet the charter school's planned growth, CAPEX needs, and operations—including upcoming renewals and refinancings of these debt obligations. For example, if the charter school is party to a payment in lieu of taxes contract, or a long-term parking lot lease, busing contract, and so on, the POS should disclose those material service contracts and the charter school's annual liabilities associated therewith.

7) *Endowments, Fund Drives, Contributions, and Gifts*

The POS should disclose any existing endowment or restricted funds and/or gifts available to the charter school, the amounts of the endowment and/or gifts, and the potential uses of the endowment and/or gifts. The POS should further disclose any fundraising drives or events that the charter school is relying upon to meet its future obligations; these efforts should include parental fundraising.

School Location, Enrollment, Service Area, and Competition Disclosure

1) *Service Area and Local Competition Disclosure*

The POS should disclose the location of the charter school in relation to the student population to be served and identify the school district within which the charter school is located. The POS should provide a zip code listing and geographical representation of the charter school's students' residence locations based on present enrollment as well as the existing wait list. The wait list should be "vetted" by the charter school to discard mere expressions of interest and represent real prior year applicants only. The POS should also disclose the charter school's competitors (public, private, religious, and other charter schools) with respect to the student population intended to be served, and its target recruitment area and market. The POS discussion should include the locations of the competing schools in relation to the charter school, the sizes and missions of those other schools, the characteristics of the student bodies served, and the capabilities of these other schools to serve the charter school's student population. The POS should discuss recent and anticipated changes in the charter school's competition such as expected expansions or upgrading of competing schools, and new or expanded services provided or to be provided by competitors. The POS should disclose data (accessible from the state or local district) concerning how many K–12 students in the defined service area are categorized as home schooled or independent learning study students. Finally, the POS should disclose the results of any market study used by the charter school in assessing the charter school's competitors.

2) *Enrollment History, Market Share, Wait Lists, and Recruitment Policies Disclosure*

The POS should disclose in tabular form data from the past five years (or data since the time the charter school commenced operations if shorter) on student enrollment and attrition, graduation, and retention rates of the charter school by grade, and in total. The POS should disclose factors associated with material changes in such enrollment from year to year over the past five years, and the methodology for assessing enrollment numbers for purposes of state and local aid funding. The POS should disclose the charter school's recruitment, marketing, and community outreach programs and how students are selected for enrollment (by lottery, first-come, or any other method) and should discuss the charter school's wait-list management and history of wait list changes per grade.

3) *Enrollment and Wait List Projections and Student Market Demand Disclosure*

The POS should disclose projected enrollment and wait lists by grade, and in total, for the next five years. If no enrollment or wait-list projections or forecasts have been prepared, the POS should discuss the reasons for this lack of information and its risks. The POS should disclose any student demand studies undertaken by or for the charter school and should contain a copy of such study in an appendix. If prepared by a third party, the charter school should address the reasonableness of the assumptions used in the study.

PART III: CREDIT RISKS AND DISCLOSURE IN NEW FACILITY ACQUISITION FINANCING

Credit risks involved in charter school acquisition financing are numerous and often the source of significant concerns. Among these concerns are the possibility of overleveraging, illiquidity, defective appraised values, flawed projection assumptions or methodologies, suitability of the building and/or location, construction cost overruns and/or delays, and conflicts of interest. Credit risks related to facility acquisition and/or construction should be evaluated and disclosed in the POS including, but not limited to, the following:

SUITABILITY AND CONDITION OF NEW FACILITY

The POS should address the rationale for the acquisition of the new facility and equipment, and should identify the parties involved in the decision-making process. The discussion in the offering documents should include a discussion of the utility and adequacy of the new facility and equipment to be acquired, especially if the new facility is being acquired in anticipation of enrollment increases or servicing of new grades (e.g., expanding to K–12). If the new facility is not new construction, the POS should include a summary of all engineering and physical needs reports that have been obtained by the charter school, and an explanation for the lack of any such reports.

FACILITY ACQUISITION PRICE, APPRAISALS, ENVIRONMENTAL DISCLOSURE; CONFLICTS OF INTEREST

This section presents areas that are potential issues regarding the price of acquisition and its attendant appraisals, environmental risks, and conflicts of interest.

1) *Acquisition Price and Appraisal Disclosure; Conflicts of Interest*

The POS should disclose the proposed purchase price of the facility and the basis for the charter school's determination of the acquisition price, (e.g., appraised value), plus an explanation for any "price premium" over the appraised value. The POS should disclose the methodology used by the charter school to determine the purchase price of the facility or equipment—this should primarily consist of an independent current market appraisal. The POS should disclose the results of any the appraisal of the new facility and attach excerpts from the appraisal as a POS appendix. For facilities under new construction, the appraisal should be an "as built" appraisal. If the appraisal is not conducted by a Member of the Appraisal Institute (MAI) appraiser, the POS should disclose the qualifications of the appraiser and the standards applied.

Conflicts of interest may be associated with "premium price" real estate sales and may occur in other aspects of new facility acquisitions. The POS should identify who negotiated the new facility acquisition and the new facility construction contracts, and their relationships to the charter school and its board. If the seller or lessor of the new facility is a party related in some way to a governing body member, management organization (or officer or owner thereof), or affiliated entity, conflict of interest issues may exist regarding the acquisition price, lease rate, purchase option, and cost-sharing and must be disclosed in the POS so that such possible conflicts of interest may be evaluated by investors and analysts. See the NFMA's *White Paper on the Disclosure of Potential Conflicts of Interest in Municipal Finance Transactions* (2015).

Environmental Remediation Risk Disclosure

The POS should disclose the status of any Phase I and Phase II environmental remediation reports, and identify risks to the charter school of remediation activities. For the acquisition of existing facilities, the POS should identify potential legacy concerns relating to matters such as Americans with Disabilities Act compliance, lead paint, mold, asbestos, and the like. Environmental risks include demolition risks and asbestos risks in remodeling facilities. If school facility construction or facility opening could be delayed or subject to large cost overruns because of unexpected environmental remediation issues, the POS should address these risks and charter school's "fallback" strategy (e.g., continuing to rent/use existing facility or an alternative facility).

FACILITY CONSTRUCTION COSTS, CONSTRUCTION MONITORING, SURETY BONDS, AND CAPITALIZED INTEREST DISCLOSURE

Facility costs can vary widely depending on the circumstances. This section considers different types of costs that should be disclosed when a Facility is undergoing construction.

1) *Architecturally Designed Facility Disclosure*

For new facility construction, the POS should disclose whether the facility is a design-build facility (*DB facility*) with a general contractor or an architecturally designed facility (*AD facility*). An AD facility may have more construction completion risk and cost overrun potentials since the general contractor will have more limited experience in determining and costing the construction materials needed, verifying construction techniques, and ensuring that final construction meets all applicable codes and building permit requirements. Consequently, the POS should address the risks of higher construction cost contingencies with an AD facility and should determine the charter school's ability to fund material change orders and/or cost overruns.

2) *Contractor Completion, Guaranteed Maximum Price Contracts, and Performance Bond Disclosure*

The POS should disclose the history of the general contractor in undertaking timely school constructions and information regarding the general contractor's reputation. The POS should disclose the complete construction budget (including soft costs, remediation costs, demolition costs, and cost overrun contingencies) plus the construction completion timeline through the certificate of occupancy and projected construction draw schedule. In addition, the POS should disclose penalties for late completion or exceeding the construction budget and financial incentives for early delivery. The POS should disclose the existence of a guaranteed maximum price construction contract with a general contractor and disclose the completion and performance bonds required from the general contractor. If no completion or performance bonds are required, the POS should disclose that information and the reasons for waiving the bonding requirement. Lastly, the POS should disclose whether the general contractor's bonds are assigned to the trustee to protect bondholders from damages from prolonged delay in construction completion.

3) *Construction Completion Monitoring and Construction Draw Disclosure*

The POS should identify the construction draw requirements in the bond documents, identify whether any third-party construction monitor is being used by the charter school, and whether monthly or quarterly construction continuing disclosure is required to be provided to the trustee.

4) *Capitalized Interest Period, Business Interruption Insurance, and Back-Up Site Disclosure*

The POS should disclose the length of the capitalized interest (CAPI) period and the charter school's business interruption insurance coverage for facility completion delays. The capitalized interest period should be sized to anticipate a potential completion delay, but CAPI does not eliminate damage to the school's cash flow from delayed enrollment, relocation costs, and other adverse events. The POS should disclose the amount of business interruption insurance available to the charter school to cover re-leasing costs, moving costs, and other expenditures in the event of a delayed new facility opening. Lastly, the POS should disclose the availability of an existing or alternative charter school facility for short-term leasing if there is a material delay in the new facility occupation.

PART IV: CHARTER SCHOOL CONTINUING DISCLOSURE

The continuing disclosure responsibilities of charter schools are partially addressed by Securities and Exchange Commission (SEC) Rule 15c2-12 regarding "material event disclosure" and are described in continuing disclosure agreements (CDAs) as part of each bond financing. Until fairly recently, most CDAs did not provide for much more investor disclosure than a year-end audit. The NFMA believes that charter school continuing disclosure needs to be far more complete, robust, and timely to reflect credit characteristics and risks specific to the sector. At a minimum, such disclosure should include the following reports, items, events, and information that are crucial to investors, rating agencies, pricing services, and charter authorizers. The NFMA recommends that future charter school financings include these best practices.

Various industry participants representing underwriters, law firms, and investors have participated in the process of creating these guidelines. To analysts, the CDA would seem to be the logical place where *all* the disclosure content the borrower has agreed to provide would be described. However, in light of recent SEC regulatory enforcement actions, a difference of opinion has emerged between underwriters and legal counsel as to exactly what is required by Rule 15c2-12, what the borrower may agree to provide voluntarily, and what can subsequently be verified as being compliant with the CDA and Rule 15c2-12.

Some law firms, for example, have chosen to narrow the scope of the CDA itself to include only annual reporting of factual information of the type described in the section on Annual Report and Year-End Audit immediately below. The borrower would then agree to voluntarily provide additional information, with that obligation set forth specifically in the loan agreement, lease, or some other key bond document. To the extent this is the approach chosen for a given bond financing—as opposed to a comprehensive CDA—***it is imperative that a clear and concise summary of the exact content that will be provided voluntarily be included in the main body of the Official Statement*** (preferably in a *Continuing Disclosure* section more broadly).

ANNUAL REPORT AND YEAR-END AUDIT

The annual report should be a comprehensive document (or set of documents) that includes or addresses the items listed below.

1. Financial Information, Covenants, and Debt Load or Leverage

a. Prepare the annual report as soon as practical, but no later than 180 days after the end of the school's fiscal year.

b. Prepare audited financial statements according to Generally Accepted Accounting Principles (GAAP) (or in accordance with fund accounting rules in states where such accounting is required) and deliver them by the earlier of any state-required date or 150–180 days after the end of the school's fiscal year.

c. Management should prepare a narrative commentary of the school's fiscal performance including a discussion of material variations in actual-to-budgeted and actual-to-prior-year results, and other significant financial matters. Changes in federal, state, and/or local funding from the prior year should be described.

d. Prepare an officer's certificate (or other form of certification) that states that, as of the fiscal year end and as of the date of the certificate, no events of default have occurred and are continuing under the bond documents (which includes the indenture, loan agreement, lease agreement, mortgage/deed of trust, tax agreement, etc.). The certificate should address the school's and/or borrower's compliance with all financial covenants and applicable insurance requirements, and should comply with the following:

- Such a certificate should show computations of the data used in the required calculations under covenants in the bond documents, including DSCR, cash/liquidity (days of cash on hand or fund balance as a percentage of revenues/expenses), fixed charge coverage ratio, and leverage (such as cash-to-debt), as applicable.

- The certificate should use calculations prepared by either the school's outside auditors or an appropriate school fiscal officer (treasurer, chief financial officer, etc.).

- Evidence should be attached of compliance with insurance requirements in the bond documents. Alternatively, such evidence may be sent to the trustee provided copies will be made available to bondholders upon request.

e. To the extent the original OS contained any enrollment, debt service coverage, and/or cash flow projections, particularly for borrowers who must grow enrollment in order to reach those numbers, provide investors with a summary of how the *key assumptions*—such as but not limited to enrollment and/or average daily attendance and local, state, and federal revenues (as well as expenditures) on an assumed *per pupil* basis, for example—have changed from those used in the original projections. Note: This is not a request for the borrower to prepare new, forward-looking projections or to provide any such update beyond the original time period in the OS. A summary of the key assumptions is sufficient.

f. Provide a discussion of the school's use of any short-term debt (such as cash flow financing, state aid notes, or bank lines) for the prior fiscal year, with a summary of key terms. Also provide a summary (as of the date of the annual report) of what short-term financing options the school has in place for the current fiscal year, if any. *Key terms* include amount, provider's name, rate, maturity, and security.

g. Discuss the amount, current status, and assumed terms of all new long-term debt (including bank loans, credit lines, qualified school construction bonds, tax credits, substantial capital leases, any loan renewals and/or refinancings, etc.) contemplated within the next 12–24 months, on which the school's governing board has taken at least preliminary official actions, if applicable.

h. Discuss new or anticipated operating leases and capital spending plans on which the school's governing board has taken at least preliminary official actions, if applicable.

2. Enrollment, Competition, and Academics

Given the wide range in charter school borrower size and composition—from single-school charters to multi-school obligated group districts—the level of detail requested below will need to be adapted accordingly. For example, aggregated data for a "joint and several" multi-school borrower would be acceptable whereas a multi-school "several but not joint" obligor would require details for each school in order to evaluate the "weakest link." On the other hand, the relative performance of a multi-school charter managed organization/education managed organization (CMO/EMO) borrower is still relevant to investors even if only a single school is financed under that particular bond issue.

a. Provide historic enrollment by grade level and for the preceding year, including average daily attendance in those instances where state aid payments are based on it (e.g., California).

b. Provide historic year-to-year student retention rate by grade level if available, or at least for each school as applicable.

c. Provide historic wait lists by grade level and information about how frequently the list is updated, refreshed, purged, and so on.

d. Provide historic year-to-year teacher retention rates.

e. Provide test results and/or the state report card from the prior school year. The school should report the results, on an aggregate and/or grade level basis (as applicable). Describe what formal remedial steps are being taken to address any substandard scores. Did the school make adequate yearly progress (AYP) and/or other academic performance indicators as required? If not, describe what indicators were not achieved and what steps are being taken to get the school into compliance.

f. Competition and scores: *At a minimum*, provide historic statewide and local district (or authorizer) comparative test results and/or school scores/grades. Particularly for a single-site school, a list of other schools (public and charter) currently considered to be its competitors would be helpful, along with the web address where investors might be able to find comparative test results and/or school grades.

g. For parity debt issuers or borrowers with more than one school facility, provide the above information school by school for fewer than five schools, or aggregated into relevant groupings (region by region, for example).

h. For "historic" information requested above, provide the preceding information in tabular format that clearly shows historic results over time, with up to five years of performance data.

3. School Governance and Charter Status

a. Provide information about when the charter was last renewed and when it will next expire. If a renewal is pending within the next year, describe the renewal process, particularly timing and requirements. Specify whether the school's charter has been revoked or is being reviewed for possible revocation.

b. In states where authorizers provide periodic public reviews, reports, or letters of good standing, attach a copy of the most recent such document, if available.

c. Provide details if the school is under any form of review or supervision plan by its authorizer, district, and/or the state, or if required pursuant to federal and/or state legislation and regulations.

d. If known, provide the name and contact information for the school's current designated representative at the charter authorizer.

e. Provide information about any changes within the past year in senior management (at the CMO/EMO level, if applicable), third-party managers, and key personnel at the school(s) or within the leadership of the board of directors. Also provide a list of the names and titles of current members of the board of directors. Any material issues with changes in board membership should be described (e.g., if the majority of board resigns in protest over some issue).

f. Provide the name and contact information of the school representative, school financial advisor, and/or investment banker that can respond to investor inquiries.

g. Provide the name and contact information of the bond trustee, to the best of the school's knowledge.

QUARTERLY UPDATE REPORTS

1. Each quarterly update report should be prepared, ideally within forty-five (but no more than sixty) days after quarter end (including for the fourth quarter), and should have at a minimum the following routine information:

    a. Unaudited, year-to-date interim income statement, balance sheet, and statement of cash flows, to the extent available or as accounting or state rules require. Financial statements should be prepared according to the GAAP, unless a state requires a different manner of presentation (financial fund accounting, for example).

    b. Actual debt service and/or rent expense paid should be footnoted if not clearly identified in financial statements.

    c. A year-to-date comparison with the most recently adopted operating budget, with a narrative discussion/management commentary of significant variances to budget.

    d. Of particular importance is a reconciliation of state/local aid payments received to date versus those identified in the budget, which should be discussed in the narrative discussion/management commentary. For schools in states experiencing aid deferrals, the amount of the deferral with details of the expected timing of receipt and so on should also be described (to the best of the school's knowledge).

    e. Borrowers are encouraged to provide interim calculations of coverage and liquidity covenants (recognizing that these are based on un-audited information and may only need to be officially calculated and measured typically on an annual basis). Interim calculations should be consistent with bond document definitions, although adjusting the time period may be necessary to more fairly represent receipt of revenue or accrual of expenses—by using a rolling four-quarterly average, for example.

2. The quarterly update should report enrollment for the quarter and/or average daily attendance. In states with official enrollment count dates or methodology, such information should be reported in the next quarterly report to be prepared.

3. A statement copy or summary of trust account balances as of quarter end should be included or, alternatively, the contact information for the trustee (provided the bond documents clearly direct the trustee to provide such information upon request).

4. Quarterly reports should be supplemented as necessary with the information contained in the next sections entitled “Timely Disclosure of Other Special Events/Information” and “Investor Conference Calls.”

TIMELY DISCLOSURE OF OTHER SPECIAL EVENTS/INFORMATION

Unlike financial statements, which are produced on a routine/quarterly schedule, certain categories of other information become known to the school less frequently or sporadically. The concept of “special events/information” is that such information would not be “special material event information” as described in the section on “Special Material Events” below but would otherwise be very material to a reasonable investor. Borrowers are *encouraged* to disclose this information promptly as it becomes available, but at a minimum *should* include it in the next quarterly report to be prepared. For example, if the prior year’s state test scores are released on July 15, the school would then include that data in the very next report to be prepared (in this case, for the quarter ending June 30, it would be sent to Electronic Municipal Market Access (EMMA®) no later than August 15). Examples of special events/information are as follows:

1. Annual operating budgets *when adopted* by the school’s board, **with enrollment, per pupil aid, and other key assumptions expressly stated**; as well as any budget for capital expenditures.

2. After school opens, actual enrollment or mid-year budget cuts may require revisions to the annual budget, so any subsequent budget should be provided to investors after adoption by the board, along with a brief narrative description of the reasons for the revisions.

3. Official state enrollment counts (for those states that have specific dates); otherwise enrollment should be reported for the quarter as above.

4. If the school is subject to mid-year cuts in federal, state, and/or local sources of funding, a narrative description of the impact on the school and management’s responses to the cuts should be provided.

5. State test results, school scores, and/or report card for the school(s) should be included in the next quarterly report after it becomes known to the school. Note that this information should also be included in the annual report, which would also then include historic and comparative information for the school, local district, state, and competitors (if known), as well.

6. Rating agency surveillance information—a copy of any information responses that is provided to the rating agency—should also be included within the next quarterly report, to the extent such information is not otherwise disclosed.

7. Interim academic performance indicators should be provided. Some schools track student progress internally during the course of the academic year. To the extent this kind of data is summarized and released publicly to charter authorizers or parents, schools are encouraged to voluntarily include it in quarterly reports when available.

8. To the extent the borrower has financed construction projects with bond proceeds, monthly construction progress reports should be posted on EMMA. These should include the percentage of construction completion and a comparison of costs to the construction budget, with a narrative explanation of significant budget variances, construction delays, contingency fund balances with amounts of approved or pending change orders to date, and so on.

INVESTOR CONFERENCE CALLS

1. The school should be prepared to host at least one annual live conference call in which management discusses prior year results and the current status of the school. This should take place in format that allows investors to be able to ask questions freely.

2. Frequency and timing will need to be negotiated between potential bond purchasers, the investment banker, and the borrower prior to bond issuance. In general, the NFMA recommends at least an annual call for investment grade–rated financings, semi-annual for BB or BB+ bond issues, and more frequently for weaker and/or non-rated borrowers.

3. Schools that encounter difficulties should be prepared (even encouraged) to speak with investors more frequently. Notwithstanding any language in the CDA or bond documents to the contrary, the borrower will agree to schedule information calls more frequently *if reasonably requested to do so by a majority of bondholders.* A letter (or letters) signed by a majority of parties who represent themselves to be bondholders (or beneficial owners) shall be sufficient for this purpose.

4. Notices of impending calls should be posted to EMMA and **all calls should be recorded,** with subsequent playback information also posted to EMMA. Typically, a recording needs to be made available for replay for only thirty to sixty days.

TIMELY DISCLOSURE OF CHARTER SCHOOL UNIQUE "SPECIAL MATERIAL EVENTS"

Although not covered by the generic SEC Rule 15c2-12 on material events, the following are definitely "material" events to charter school bondholders and should be *promptly* reported to EMMA. In the case of items 1 and 2, *that would be within no more than ten business days* and within no more than thirty days of occurrence for the others:

1. Notices of *potential* adverse actions of which the school has been notified; *adopted* corrective plans of action, adverse actions, or restrictions; and charter non-renewals or revocations by the charter authorizer, and status updates on appeals or actions taken by the school in response.

2. Notices of investigations or actions taken by regulatory agencies (such as the SEC, for example).

3. Litigation (including any matters of criminal misconduct) against the school, board members, or employees to the extent such action is expected to materially affect operations and/or school finances.

4. Casualty losses, to extent daily operations are disrupted for more than seven to ten days, with information about insurance coverage.

5. Non-scheduled terminations by the board, or resignations, of key school administrative personnel and/or management contracts; as well as material changes in members of the board of directors (such as a mass resignation, for example).

6. Building code or other public health and safety violations in the school (or adjoining property) that disrupt operations in the school for more than seven to ten days.

Other Continuing Disclosure Considerations and Disclosure Timing

1. Borrowers need to be educated on the importance of continuing disclosure. Who has continuing disclosure preparation and posting responsibility for the school also needs to be clearly identified, recognizing that trustees are often not as reliable as they should be.

2. The CDA or loan agreement needs to explicitly state what information, certifications, and disclosure will be provided by the school. Fill-in-the-blank report templates attached as exhibits to the CDA are strongly encouraged.

3. All disclosure should be posted to EMMA.

4. SEC Rule 15c2-12 material event disclosure responsibilities should ALWAYS apply—using the limited offering exemption is not acceptable.

5. Merely sending copies of state reports (in the absence of additional disclosure providing the context in how to interpret them) should not be viewed as constituting adequate continuing disclosure. In other words, quantity is no substitute for quality.

NFMA constituent societies, individual members, or their firms may not agree with all provisions in these RBPs. The NFMA is not a regulatory agency and compliance with the RBPs advanced herein does not constitute a "safe harbor" from any state or federal rules and regulations. Nothing in this paper is to be construed as an offer or recommendation to buy or sell any security or class of securities.