National Federation of Municipal Analysts

White Paper on Evaluating Municipal Collateral Packages

Draft dated November 20, 2026; Comments due by January 20, 2027



EXECUTIVE SUMMARY

The White Paper on Evaluating Municipal Collateral Packages (White Paper) is intended to educate analysts on the evaluation of a municipal collateral package supporting a municipal bond by categorizing collateral package components as statutory liens, UCC security interests, mortgages/deeds of trust, common law pledges, and collateral assignments of contracts. The White Paper then identifies the various risks involved in not properly documenting the municipal collateral package at closing or not obtaining appropriate offering statement disclosure of the municipal collateral package. Finally, it discusses various collateral risk topics needed to properly evaluate the strength of a municipal collateral package such as bankruptcy matters, property insurance coverage, gross vs. net revenue pledges, title insurance, special revenues, and negative pledges.

Since its inception in 1983, the NFMA has been at the forefront of efforts to improve disclosure of credit and other risks that investors face in the taxable and tax-exempt municipal bond markets. The NFMA's work in this regard has been recognized by other industry associations and by various regulatory bodies.

The NFMA is a 1,200-member organization, made up primarily of research analysts representing asset managers, insurance companies, broker/dealers, bond insurers, rating agencies, and other stakeholders in the municipal market.

One of the NFMA's principal goals is the promotion of timely and materially complete and accurate disclosure of information needed to assess municipal securities risks. The NFMA's disclosure efforts have addressed broad areas of concern, ranging from industrywide topics to detailed work on specific credit sectors. For further information on continuing efforts to improve disclosure, see the Disclosure Guidelines and Position Statements in the Resources section of the NFMA's website (www.nfma.org).

To develop its white papers, seasoned NFMA analysts representing different types of companies work together to develop information and best practice suggestions on a particular topic. The NFMA provides the municipal securities industry with an opportunity to comment on proposed white papers. These papers provide industry participants with specific information needed both to help analysts do their jobs better and to allow investors to make better-informed investment decisions. The NFMA believes that the best practice in disclosure will always be the one that provides a steady flow of timely material information from issuers, borrowers, and obligors to the entire market.

Please note that this White Paper does not constitute legal advice to any participant in the municipal bond market, including, among others, bond issuers, obligors, broker-dealers, and/or law firms. The White Paper represents the NFMA's recommendation for disclosure practices based on our experience as municipal credit analysts and market participants, but recommendations included herein are not intended to constitute legal standards or any form of minimum disclosure requirements.

OVERVIEW: BENEFITS OF MUNICIPAL COLLATERAL PACKAGE EVALUATIONS

The White Paper on Evaluating Municipal Collateral Packages (White Paper) provides analysts with a basic understanding of the concepts and tools needed to conduct a thorough evaluation of a municipal collateral package using offering documents. It describes five legal structures forming the basis for collateral packages in most municipal bond borrowings. More than one legal structure may be provided in any given transaction and should be evaluated separately. The five structures are introduced and discussed below.

Collateral package evaluation is crucial in both new issue and secondary market bond transactions and constitutes an important part of an analyst's due diligence in assessing municipal credit repayment risks, evaluating potential losses, and assessing recovery prospects in a default scenario.

Bondholder recovery in municipal bond transactions is highly dependent on the scope, quality, documentation and sufficiency of the collateral package securing the municipal bond transactions. This is especially true in high yield municipal bond transactions that fund riskier start-up projects like hotels, senior living facilities, mixed use retail developments, recycling and bio-gas plants, industrial projects, business parks, and other projects with a higher risk profile.

As used in this White Paper, municipal collateral package (MCP) refers to revenues and property that are legally committed to repayment of municipal bond debt. Effectively structured collateral packages provide the greatest chance of recovery of principal and interest if the issuer or borrower experiences financial difficulties and cannot meet their required debt service payments. Consequently, this paper will assist analysts in making better informed assessments of credit repayment strength and risk of loss.

LIMITS OF THIS WHITE PAPER

This White Paper is not intended to address every type of collateral package offered in municipal bond transactions and cannot identify all categories of material information to be included in offering documents. The NFMA recognizes that information and data needed to analyze a collateral package will vary with each transaction, but it is the NFMA's hope that this White Paper provides market participants with guidance for evaluating collateral packages. Issuers, obligors, financial advisors, underwriters, legal counsel, and other parties involved in the disclosure process should exercise professional judgment in accordance with applicable securities laws and industry best practices to ensure there is appropriate MCP disclosure in the offering documents for each municipal bond transaction.

This White Paper does not address third-party credit enhancements like guarantees, letters of credit, municipal insurance, or the various forms of state and local government credit support such as moral obligation debt and state intercept programs. It is recommended that such credit enhancements should be separately analyzed to form a complete approach to evaluating municipal credit quality. Additionally, this White Paper does not provide detailed bankruptcy claims analysis typically confronted in Chapter 7, 9 or 11 bankruptcy cases. Municipal analysts are encouraged to consult NFMA's "*White Paper on General Obligation Bond Payments: Statutory Liens and Related Disclosures*" dated December 2017 that discusses various bankruptcy matters affecting MCPs (including special revenues, statutory liens, the effects of the automatic stay), and the post-petition limits on security interests and other components of the MCP.

UNDERSTANDING "PLEDGE", "LIEN" & "SECURITY INTEREST"

Municipal bond offering documents often contain undefined references to a "pledge", "lien", or "security interest" on governmental revenues, taxes, real estate, equipment, and other collateral. However, the exact nature, scope and limits of those terms may not be appropriately and fully disclosed in these offering documents. Therefore, an analyst must seek to understand and verify what each of these terms means. This is one of the primary objectives of this White Paper. Throughout the paper, and for simplicity, a pledge generally means identifying what is being offered in the MCP and includes the lien or security interest nomenclature commonly found in these transactions.

GUIDE TO THIS WHITE PAPER

The first five sections in this White Paper discuss five legal structures typically found in an MCP. More than one legal structure may be provided in any given transaction and should be evaluated separately. Each structure presents unique benefits and risks to bondholders, and each should be identified and evaluated carefully. The remaining sections address other considerations in the collateral package review.

I. Statutory Liens
II. UCC-9 Security Interests
III. Mortgages, Deeds of Trust & Leasehold Interests
IV. Common Law Pledge & Depository Account Control Agreements
V. Collateral Assignment of Contracts
VI. Identifying Municipal Collateral Package Documentation & Closing Risks
VII. Scope of the Trust Estate Described in the Bond Indenture: Assistance of Bond Counsel
VIII. Special Considerations Regarding Municipal Collateral Package Evaluations
IX. Continuing Disclosure & Post-Closing Collateral Package Reporting

There are also five appendices to this White Paper, listed below.

Appendix A – Roles, Representations & Responsibilities of Counsel in Municipal Bond Transactions

Appendix B – Documentation Needed to Create UCC-9 Security Interests

Appendix C – Pre-Closing & Post-Closing Collateral Package Risks

Appendix D – Documentation & Verification When Assessing Project Fund Draws

Appendix E – Sample Post-Closing Collateral Package Monitoring Provisions

Various terms, such as bond documents, offering documents, indenture, loan agreement, etc., are used throughout this White Paper. For the purpose of this White Paper, all such documents are used interchangeably as "bond documents" and/or "offering documents". Further, this White Paper also references the terms "issuer" and "borrower". It should be noted that issuers and borrowers may play different roles depending on the sector and type of transaction and are *not* meant to be used interchangeably. To the extent that there are ambiguities regarding these roles, analysts are encouraged to seek counsel for clarification.

I. STATUTORY LIENS

What is a Statutory Lien?

A statutory lien is a legal claim that arises solely and automatically by operation of statute, ordinance or law without notice to any party or any further action by the lienholder or debtor and is not based on any written agreement between the parties. For purposes of example, a statutory lien may provide a pledge of state sales tax collections arising under a statute that provides for the financing of various state projects and only requires reference to that state statute in the trust indenture, loan agreement, etc. to create the statutory lien in favor of the bond trustee.

The statute, law or ordinance creating the statutory lien may be federal, state, or local and should be written to meet the U.S. Bankruptcy Code definition that perfects a bondholder's post-petition pledge on the collateral. The conditions upon which a statutory lien is created will differ on a case-by-case basis and should be disclosed in the offering documents so analysts can undertake a collateral package evaluation to review and verify all conditions needed to create the statutory lien in favor of the bond trustee have been satisfied.

Analysts' Collateral Package Evaluation: Statutory Liens

Generally, analysts should undertake the following due diligence on statutory liens:

A. Identify the statutory lien contained in the collateral package
B. Verify the offering documents contain the specific statutory language creating it
C. Determine any limits on the scope or enforcement by the bond trustee
D. Verify the language in the "trust estate" definition of the offering documents is consistent with the language creating the statutory lien

Ambiguity in the specific language concerning statutory liens may create enforcement uncertainty for the bond trustee if it is not adequately addressed in the offering documents. For example, there may be a difference of legal opinion as to whether the pledge described in the offering documents is a statutory lien under the U.S. Bankruptcy Code and may limit the bond trustee's ability to act on behalf of bondholders in a bond default without prejudicially lifting the automatic stay in bankruptcy.

When assessing offering documents, analysts should ascertain the language creating such statutory lien, its scope and terms, and any rights or remedies available to the bond trustee to enforce it. In some cases, legal opinions regarding the creation and validity of a statutory lien may be obtained by the underwriting team, and analysts should inquire whether these opinions are available for review and evaluation. When the language in the offering documents describing the statutory lien differs from the statute creating it, analysts should assess these differences to avoid limitations or uncertainties when acting upon it may be required in the future.

II. UCC-9 SECURITY INTERESTS

What is a UCC-9 Security Interest?

A UCC-9 security interest is an interest in personal property that a creditor obtains through a written agreement to secure repayment of a debt or performance of some obligation. As suggested by its name, a UCC-9 security interest is governed by Article 9 of the Uniform Commercial Code (UCC), which is a uniform state law that outlines the rules for creating, perfecting, prioritizing, and enforcing

security interests in personal property and fixtures. Personal property is broadly defined to cover equipment, fixtures, inventory, accounts, general intangibles (e.g., intellectual property), depository accounts, chattel paper, investment property, instruments, supporting obligations, and other forms of tangible and intangible personal property (collectively "UCC-9 Collateral"). The UCC has been enacted in every state plus Puerto Rico and the U.S. Virgin Islands, although some states have made state-specific modifications to the UCC-9. It is notable that UCC-9 security interests generally do not continue after a bankruptcy filing due to the automatic stay provision of the U.S. Bankruptcy Code.

UCC-9 Security Interest Creation (Attachment and Perfection)

There are two requirements to properly create and document a UCC-9 security interest: attachment and perfection, as defined below.

Attachment requires three conditions to be met. First, a creditor has given value for the security interest. Second, the borrower has the requisite ownership or rights to grant the security interest in the personal property, and third, there is a written security agreement showing the borrower intended to create a security interest in the UCC-9 Collateral to the secured party.

Perfection is typically achieved by filing a UCC financing statement in the appropriate state, county, or local public records office, which should include required identifying information about the borrower and secured parties, and a detailed description of the UCC-9 Collateral. For certain types of UCC-9 Collateral, the UCC-9 requires additional or alternate steps for perfection. For example, deposit accounts and investment property require control by the secured party to be perfected, meaning the secured party can control this UCC-9 Collateral by directing a bank or securities intermediary to turn over of the UCC-9 Collateral to the bond trustee without notice to or the consent of the borrower.

Assuming the UCC-9 security interest has been properly documented pursuant to UCC-9, the bond trustee may have a priority interest in the UCC-9 Collateral ahead of other unsecured and judgment lien creditors should the borrower seek bankruptcy court protection. Generally, creditors may have the right to privately or publicly liquidate the UCC-9 Collateral with proper notice (i.e., self-help repossession) and have the right to retain all liquidation proceeds from the UCC-9 Collateral up to the amount of the debt outstanding, plus interest and any liquidation expenses.

Proper UCC-9 Collateral Terms; Security Interests In "Revenues"

Incorrectly describing the UCC-9 Collateral in the bond documents can adversely affect the ability of the bond trustee to realize on the UCC-9 Collateral in a foreclosure scenario. To be effective, UCC-9 security agreements, financing statements and relevant bond documents must use the UCC-9 Collateral descriptions current at the time the security interest was created. Analysts should find the then current collateral descriptions to assess whether collateral has been properly categorized.

An example of improper UCC-9 collateral descriptions is in the concept of security interests in revenue pledges. Many municipal bond deals are supported by a pledge of government revenues like tax collections, government fees, or other government revenues. However, UCC-9 does not include the term "revenue". Usually, government revenues can be categorized under the UCC-9 as a combination of accounts, general intangibles, cash proceeds, depository accounts, and proceeds thereof, although analysts should seek the advice of counsel.

Analyst's Collateral Package Evaluation: UCC-9 Security Interests

Analysts should undertake the following due diligence on UCC-9 security interests contained in an MCP:

A. Determine whether a legal opinion was obtained by the underwriting team on the UCC-9 security interest
B. Identify each written security agreement (which may be in the loan agreement, mortgage or deed of trust) and review them for completeness and scope
C. Verify the proper UCC-9 Collateral terms are contained in the definition of the trust estate in the bond indenture, security agreement and any other governing documents
D. Review the proposed UCC-9 financing statements to confirm they contain the proper UCC-9 Collateral descriptions, and that they are being filed against every party who is granting a UCC-9 security interest to the bond trustee or issuer, and are being filed in the correct state/county
E. Verify whether the bond trustee needs to control or possess any items of UCC-9 Collateral to properly perfect its interest in such items like cash and deposits, and that they are maintained in separate accounts.

Cautions & Special Considerations Regarding UCC-9 Security Interests

A. UCC-9 Exclusions – Analysts should not assume that a UCC-9 security interest exists merely because the offering documents state one does, and should be cautious in assessing the application, strength and scope of the interest. Each state's UCC-9 usually contains a standard exclusion for municipal debt transactions if the state has another statute that governs the creation, attachment, perfection, priority, enforcement or liquidation of a security interest. Certain states have adopted non-uniform state amendments to the UCC-9 (i.e., that have not been adopted by all 50 states) that may exclude certain municipal debt transactions from coverage by that state's UCC-9 or impose special rules or limits regarding municipal debt transactions. To address these risks of exclusion, analysts should be sure the offering documents address these specific exclusions and seek legal counsel, as appropriate.
B. Commingling of Funds – With respect to the commingling of funds and the risks associated with an adverse finding that could limit collection under UCC-9, the bond trustee should obtain control over tax or revenue collections by the borrower through special depository or lockbox accounts in the name of the bond trustee, and special direct remittance agreements between the bond trustee and those government entities that collect the taxes or revenues. These agreements should specifically preclude combining these revenues or taxes from other non-pledged revenues or taxes of the issuer or borrower. Under most UCC-9 statutes and U.S. bankruptcy law, if pledged revenues or tax collections become commingled with other non-pledged funds, the bond trustee may lose its UCC-9 security interest.
C. UCC Searches & Financing Statement Filings – Analysts should determine whether the underwriting team has obtained UCC, lien and litigation searches covering all borrowers (including the issuer if relevant), any guarantor, collateral pledgor, and any other party providing UCC-9 Collateral. These searches should be done for the location of the assets in the MCP and in the location of the main corporate office of each borrower and other parties providing UCC-9 Collateral. To prevent missing or misfiled UCC financing statements, analysts should ask the bond trustee to conduct a post-closing UCC and Lien search to verify all UCC financing statements were properly filed and that there were no intervening UCC or lien filings.

III. MORTGAGES, DEEDS OF TRUST & LEASEHOLD INTERESTS

One of the most common security pledges in municipal bond financings for project debt is a pledge of real estate. Each state determines which types are allowed, with New York allowing mortgages, California allowing only deeds of trust, and a few states, like Illinois, allowing both. The difference between a mortgage and a deed of trust relates to how loans are secured and how foreclosure is handled. Finally, when the real estate is owned by a governmental entity or nonprofit organization that wishes to permit development of the project using municipal bond financing without pledging the underlying land itself, a leasehold interest may be offered as the preferred form of collateral. This structure is common in certain student housing transactions.

Mortgages and Deeds of Trust

Mortgages and deeds of trust differ in two fundamental ways, the first being the number of parties involved in the pledge and which parties can act to recover amounts due that relate to the pledge and the other being the type of foreclosure proceedings available to the bond trustee in the event of borrower default.

Mortgages are two party transactions involving the lender, or mortgagee, and the borrower, or mortgagor. In municipal bond transactions involving mortgages, the mortgagee is the issuer or bond trustee representing the bondholder's interest. The mortgagor uses the property identified under the mortgage as collateral and makes payments, while the mortgagee holds a legal claim (lien) on the property and receives the payments until the obligation is repaid.

Deeds of trust are three party transactions involving (1) the beneficiary or lender (i.e., the issuer or the bond trustee), (2) the deed of trust trustee, and (3) the borrower. In this arrangement, the deed of trust trustee is an independent third party, typically an attorney or an agent at the title company, vested with holding title to the real estate for the benefit of the lender.

Mortgages and deeds of trust also differ in the way foreclosure proceedings are carried out. In a mortgage, the lender or mortgagee is given the right to dispose of the borrower's fee interest in the real estate.

The bond trustee may use a non-judicial foreclosure process if the power to sell the real estate is granted in the loan agreement, thereby allowing the bond trustee the right to sell the property and use the proceeds to pay off the bonds when a borrower defaults on the loan. In a mortgage, the bond trustee need not seek a court hearing in order to carry out the foreclosure process. Once notice of the default and pending foreclosure proceedings is made to all parties to the loan agreement, and under the assumption events of default have been previously declared and the loan deficiency remains uncured, the bond trustee issues a notice to sell the property at auction. However, with mortgages the bondholders give up the right to obtain a deficiency judgment against the borrower to make up the difference between the amount owed on the loan and the proceeds from the sale of the real estate.

Alternatively, loan agreements that do not allow the power to sell the real estate in an event of default require the bond trustee to initiate judicial foreclosure, which requires a court hearing. If the lender is successful at the hearing, the court will order the sale of the property at auction. Judicial foreclosure allows the bond trustee to pursue a deficiency judgment against the borrower in the event the sale proceeds are insufficient to pay off the loan. Under judicial foreclosure, a borrower may have the right to redeem the property from the new owner for a specified period after the sale of the property and delay ultimate resolution of the default.

Many lenders prefer to use non-judicial foreclosure because it is often faster and less expensive than judicial foreclosure. Non-judicial foreclosure has an expedited timeframe compared to judicial foreclosure. But borrowers have no right of redemption in non-judicial foreclosure, meaning they cannot buy the property back after the foreclosure sale like they can in a judicial foreclosure.

Fee Simple Interest

A fee simple interest is the most complete form of property ownership, granting the owner absolute, unrestricted rights to possess, use, sell, lease, or transfer the property indefinitely and is only limited by government powers like taxation, eminent domain and zoning, and public or private land use restrictions like easements. A fee simple interest gives the bond trustee a lien on the owner's full ownership of the land, buildings, improvements, and fixtures on that land.

To create a real estate lien, the mortgage or deed of trust must be recorded in the proper real estate filing office (e.g., county register or recorder) and contain an accurate and complete legal description of the pledged real estate. Normally, the mortgage or deed of trust must be filed ahead of any existing mortgages or deeds of trust, ground leases, tax liens, judgment liens, and any other liens to achieve the first position lien in payment priority in favor of the bond trustee. All pre-existing mortgages, liens, judgments, easements and other encumbrances should either be paid off at closing of the bond transaction and released by the lien holder or subordinated to the bond trustee's mortgage or deed of trust in a written and recorded subordination agreement.

Leasehold Mortgages and Leasehold Deed of Trust

A leasehold mortgage or deed of trust grants a security interest in the underlying real estate, but not the fee simple interest in the land, which is retained by the landowner. Leaseholds are like a tenant/landlord relationship. This structure allows the borrower to use their long-term right to lease the property as collateral to secure a loan that allows the lender to take over the lease and improvements if the borrower defaults.

The leasehold is usually comprised of the borrower's rights to use the landowner's land as specified in the ground lease and grants the right to improve the land with buildings and improvements owned by the borrower. This is generally referred to as a tenant's leasehold interest. The leasehold interest does not grant a bond trustee a right to foreclose on the underlying land. Consequently, the bond trustee's real estate lien usually exists solely on the tenant's leasehold interest, and the bond trustee's access to and right to foreclose on the tenant's leasehold interest is subject to the terms of the lessor's rights under the ground lease. With leasehold interests, the borrower makes ground lease payments to the landowner for continued use of the land. Generally, but not in all cases, the term of the ground lease exceeds the term of the bonds.

Because leasehold interests are subject to the borrower's continued compliance with the ground lease, the leasehold mortgages or deeds of trust may be perceived as less valuable to a bond trustee than fee simple interests and can present additional risks that limit the bond trustee's ability to sell the tenant's leasehold interest and recover on the collateral. Non-payment of amounts owed to the landowner under the ground lease may result in the landowner termination of the ground lease and preclude the bond trustee from extracting value for the improvements financed with the bonds.

One way to mitigate this risk is to request the underwriting team initiate a separate agreement between the bond trustee, landlord and borrower/lessee called a subordination, non-disturbance and attornment

agreement (SDNA) that does not permit the ground lease to be terminated if the bond trustee agrees to cure any defaults under the ground lease and comply with the ground lease until the bonds are paid off. The agreement may also allow the bond trustee to foreclose on the tenant's leasehold interest, to assume the ground lease, or assign the borrower or lessee's interest in the ground lease to a third party, all without consent of the landlord or landlord's lender(s). Continued compliance with the terms of the ground lease allows the bond trustee and borrower to negotiate resolution to the bond default without the risk the landowner will take action to prevent such a resolution because the buildings and improvements situated on the landowner's property are no longer available to be sold.

Analyst's Collateral Package Evaluation: Mortgages & Deeds of Trust

Generally, analysts should undertake the following due diligence on mortgages or deeds of trust contained in an MCP:

A. Identify each parcel of real estate that is subject to a mortgage or deed of trust
B. Verify what type of real estate interest is being offered (fee simple interest or leasehold interest)
C. Verify that borrower has clear title to the property pledged in the mortgage or deed of trust through review of the title insurance commitment with the bond trustee named as insured, ensuring that the bond trustee will have a first priority interest in the pledged collateral
D. Verify each mortgage or deed of trust is contained in the definition of the trust estate, as defined in the offering documents
E. Verify that each legal description has been confirmed by a recent land survey
F. Verify if any appraisals, environmental reports or physical needs assessments exist for any of the real estate interests
G. Verify that a property insurance certificate exists for each parcel of real estate with adequate insurance coverage and reasonable deductibles or co-insurance, and also names the bond trustee as insured lender

Additional Considerations Regarding Mortgages & Deeds of Trust

A. Title Insurance Coverage, Title Problems and Exceptions – When bond proceeds are used to purchase or improve bond-financed real estate, the bond trustee typically receives a lender's title insurance policy, which guarantees the lien on real estate is free and clear from undisclosed and unpermitted encumbrances or ownership disputes. Title insurance mitigates the risk of title defects that could impair the value or enforceability of foreclosing under the mortgage or deed of trust and liquidating collateral package. When clear title to the property may be questioned, the analyst can request a copy of the title insurance commitment from the underwriting team for review by counsel who may ascertain that any material exceptions to the title are subject to third-party commitments to deliver the necessary satisfactions, releases and confirmations upon funding of the municipal bond transaction.
B. Property Insurance Coverage on Real Estate and Equipment: Property insurance coverage is important to protect the bond trustee's right to the value of the real estate and equipment collateral package if it is damaged or destroyed. As part of the analysts' pre-closing verification process, a property insurance certificate should be delivered to the underwriting team showing the bond trustee as insured party under a lender's loss payable endorsement. Additionally, analysts can request a copy of the property insurance certificate and any additional insurance like builders' risk insurance and business interruption insurance that may mitigate risk of loss

on the real estate and equipment contained in the MCP. Analysts should verify the insured amounts for the real estate and equipment are adequate, and that any deductibles and co-insurance requirements are vetted and reasonable. An endorsement may also be entered that requires the parties to the policy to notify the bond trustee if the property insurance is terminated or reduced, which can occur if the insurance premiums are not paid.

IV. COMMON LAW PLEDGE & DEPOSITORY ACCOUNT CONTROL AGREEMENTS

A common law pledge, also known as a possessory pledge, is a legal arrangement where a borrower, or pledgor, transfers possession or control of certain assets, funds or personal property (Pledged Assets) to a lender like the bond trustee, or pledgee, as collateral to secure repayment of a debt. This structure allows the lender to sell the property to recover the debt if the borrower defaults. This security feature gives the lender rights to the asset until the bonds are repaid, thereby reducing credit risk.

The transfer of possession can be either physical or constructive through a possessory agent and identified through a written control agreement with a depository bank. The possessory pledge gives the bond trustee an enforceable right of liquidation over the Pledged Assets in the event of a default on the bonds. Common law pledges rely on physical or constructive possession of the Pledged Assets to perfect the lien, and the pledge must comply with relevant state laws regarding ownership and transferability of the Pledged Assets.

While a common law pledge can provide other creditors with direct control over the pledged assets, the requirement of physical or constructive possession of the pledged assets usually limits the availability of such a common law pledge to the bond trustee. Pledged Assets may include tangible or intangible personal property of the borrower.

Tangible property includes physical items that can be touched, moved, or consumed, and which have an intrinsic value. Vehicles used at a senior living facility, artwork owned by the borrower, and food or beverage inventory at a hotel are a few examples of tangible personal property. Intangible personal property includes cash, bank deposits, certificates of deposit, stocks, bonds, accounts receivable, and other financial instruments or funds. In municipal bond transactions, a common law pledge is typically utilized by the bond trustee to obtain a lien on the trust accounts it holds like the debt service reserve fund, construction or project fund, and capitalized interest accounts. The bond indenture creates the possessory pledge for these Pledged Assets that become part of the trust estate. A useful aspect of a common law pledge is the bond trustee's right to reduce, or "set-off" amounts owed on the bonds from any funds and cash held by the bond trustee without notice to or consent of the borrower

Depository Account Control Agreements

The manner in which a common law pledge is effectuated for intangible personal property most common in municipal bond transactions is through a deposit account control agreement (DACA). A DACA is a contract that provides a method for the bond trustee to obtain control of financial assets like cash, depository accounts and securities accounts held by third-party banks, depository institutions or securities intermediaries for and on behalf of the bond trustee as a secured party. Under a DACA, a borrower grants the bond trustee a security interest, by possessory control, over a depositary

account by allowing the bond trustee to issue binding instructions to the bank or securities intermediary (without further consent of or notice to the borrower) and nominating the bank or securities intermediary as the bond trustee's possessory agent. A DACA ensures that deposits or Pledged Assets remain accessible to the bond trustee for debt service payments and may enhance the bond trustee's sources of recovery for bondholders in an event of default.

A DACA may take several forms. In the first, the borrower maintains control over the depository account/s or Pledged Assets until an event of default occurs. When it does, the bond trustee then has the sole legal right to instruct the depository bank to remove the borrower's access to the accounts and grants full control to the bond trustee to liquidate the deposit accounts or Pledged Assets and transfer the proceeds to the bond trustee. This "springing" or contingency driven provision is only enacted to resolve an uncured default of the borrower and utilized to prevent the borrower from utilizing monies contained in the accounts specified in the DACA while the default remains unresolved.

In the second form, the bond trustee, from the closing of the municipal bond transaction, has sole control over the depository accounts or Pledged Assets, and has the legal right to instruct the depository bank to withdraw, deliver or use funds as directed by the bond trustee.

Analyst's Collateral Package Evaluation: Common Law Pledges

Analysts should undertake the following due diligence on common law pledges contained in an MCP where they are a material part of the collateral package:

A. Identify any funds or assets that are pledged to the bond trustee where the offering documents do not state they are subject to a statutory lien or a UCC-9;
B. Verify which party has possession or control over the funds or assets to be pledged to the bond trustee at closing such as the bond trustee, a bank, or some other entity;
C. If the funds or Pledged Assets are not actually possessed by the bond trustee at closing under the bond indenture (e.g., debt service reserve fund, capitalized interest account, etc.), verify if the bond trustee has a written pledge agreement or DACA with such third party to allow the bond trustee to seize those funds or Pledged Assets and apply them to payment of the bond debt; and,
D. If the funds or assets are a substantial portion of the pledge, verify if a legal opinion has been obtained confirming the bond trustee's ability to enforce the pledge agreement and DACA.

V. COLLATERAL ASSIGNMENT OF CONTRACTS

Collateral assignment of contracts is a written agreement where the borrower assigns its rights, title, and interests in third-party agreements, usually related to the construction and operation of a project funded by the bond proceeds, as collateral to a bond trustee as the secured party. This pledge is common when bond proceeds finance new construction or rehabilitation of existing projects, and cover project agreements, construction contracts, development agreements, management agreements, feedstock and offtake agreements, and any other agreements that are integral to the construction, completion, development, operation and revenue generation of the project.

A collateral assignment allows the bond trustee to step into the shoes of the borrower pursuant to the pledge if the borrower is in default and permit the bond trustee to assert the borrower's rights and obligations, duties and responsibilities under the contract, cure any borrower default thereunder by making required payments, and cause a third party to complete the borrower's obligations. Without a

collateral assignment of contracts, the bond trustee may be impeded from protecting the value of the MCP without the ability to compel completion of the project, to sell the project, or to find a third-party operator to manage the project to generate revenues necessary to pay the bond's debt service.

Blanket Assignments versus Direct and Specific Assignments (Tri-Party Agreements)

Collateral assignments may be structured in two ways. Under the first approach, the borrower grants the bond trustee a single, comprehensive assignment of all its rights, title, and interests under the relevant contracts (a Blanket Assignment). A Blanket Assignment eliminates the need for the bond trustee to seek and obtain the consent of each third-party counterparty to individually assign those contracts. The existence and scope of the Blanket Assignment should be specifically addressed in the offering documents, including the bond indenture, loan agreement, and security agreement, as applicable. In addition, the definition of the trust estate in the bond indenture should include a complete description of the contracts subject to the Collateral Assignment. In the second, the borrower, bond trustee and contracting third party may enter into a Direct and Specific Assignment in a single agreement typically referred to as "a Tri-Party Agreement", that provides an individual, specific assignment of each contract stated in the agreement. Structurally, the pledge is strongest when all contracts necessary to build and operate the project are the subject of a Tri-Party Agreement.
Under a Tri-Party Agreement, the third-party contractor may agree to:

A. Recognize the bond trustee as having an interest in, and being a beneficiary of, the contract
B. Grant the bond trustee notice and cure rights if there is a default under the contract
C. Continue performing under the contract when a borrower is in default of provisions contained in it
D. Avoid amending, modifying, cancelling, terminating, assigning or transferring the contract without the prior written consent of the bond trustee
E. Allow a replacement agreement on the same terms as the contract if it is terminated or rejected because of any borrower bankruptcy or insolvency proceeding
F. Pay all amounts due to the borrower under the contract directly to the bond trustee

Notably, the two forms of collateral assignment are not mutually exclusive, and the Blanket Assignment can be used at closing in situations where a Tri-Party Agreement is still being negotiated. Tri-Party Agreements may provide a better form of protection for the bond trustee to ensure it has the unrestricted right to step into the position of the borrower to enforce the contract provisions in the event of borrower default since the consent to do so has been obtained at closing. Contracts that will be in place or entered into at the bond closing should be specifically identified in the Tri-Party Agreement and delivered for review at closing.

For any future, post-closing contracts, the borrower should covenant in the bond indenture and loan agreement to include them in a Collateral Assignment with prompt delivery to the bond trustee.

In drafting the Blanket Assignments and Tri-Party Agreements, specific cure periods should be identified to address defaults under them. Ideally, each agreement would provide a 90-day cure period for monetary defaults, and a 120-day cure period for any other defaults under the contracts.

Analyst's Collateral Package Evaluation: Collateral Assignment of Contracts

Analysts should undertake the following due diligence on the collateral assignment of contracts contained in an MCP:

A. Identify each contract necessary to complete and manage the project or systems being funded by the municipal bond debt
B. Verify the parties to the contract and the scope of each party's responsibility covered by it
C. Verify that the contract is executed
D. Verify which contracts are to be collaterally assigned to the bond trustee at closing in the offering documents, and the type of Collateral Assignment (Blanket or Tri-Party Agreement)
E. For contracts that are under negotiation or are not expected to be collaterally assigned to the bond trustee at closing, verify who is responsible for finalizing those contracts and collaterally assigning the contract to the bond trustee post-closing

VI. IDENTIFYING MUNICIPAL COLLATERAL PACKAGE DOCUMENTATION & CLOSING RISKS

MCP evaluations are critical in identifying and correcting documentation gaps, ambiguities and conflicts in the offering documents, the bond financing agreements, and in the closing of the municipal bond transaction. They can also be complex and include different forms of legal structures, so inconsistencies, gaps and ambiguities can arise in structuring and documenting the MCP. The primary responsibility for eliminating any gaps and ambiguities in the collateral package lies with the underwriting team.

For example, a municipal bond transaction may be supported by a loan from the issuer to the project borrower who has granted the issuer a UCC-9 security interest on various items of personal property and a real estate lien on the project real estate, and the issuer has also granted the bond trustee a direct statutory lien on certain government revenues and taxes related to the project. Analysts should specifically evaluate both levels of this collateral package separately and seek from the underwriting team the proper risk disclosure about the statutory lien, UCC-9 security interest, real estate mortgages, common law pledges, and collateral assignment of contract risks for each MCP level.

If there is any ambiguity, analysts should reach out to the underwriting team for clarification. For more details on pre-closing and post-closing collateral package risks, see Appendix C: Pre-Closing and Post-Closing Collateral Package Risks.

VII. SCOPE OF THE TRUST ESTATE DESCRIBED IN THE BOND INDENTURE: ASSISTANCE OF BOND COUNSEL

The proper definition of the trust estate in the bond indenture is a critical element in establishing the scope and depth of the MCP and the bond trustee's ability to exercise rights and remedies against it if needed to pay off the bond debt. Even where individual collateral components are properly created and documented, enforcement risk remains if those components are not expressly and consistently included in the trust estate. Generic references to liens, pledges, or security interests are insufficient substitutes for affirmative identification of the specific assets, revenues, agreements, and funds comprising the collateral package. The trust estate definition therefore provides the final structural check on whether the collateral package operates as a unified and enforceable whole. For the avoidance of doubt, collateral assignments of agreements should be identified in the definition of trust estate. If there's no purchaser's counsel to weigh in on the definition of the trust estate, bond counsel may act as a resource as they are responsible for drafting of the bond indenture and other bond documents.

VIII. SPECIAL CONSIDERATIONS REGARDING MUNICIPAL COLLATERAL PACKAGE EVALUATIONS

Chapter 7, 9, and 11 Bankruptcy Filing Eligibility & Special Revenue Considerations

Analysts should always be aware of bankruptcy eligibility for the entities involved in municipal bond transactions, whether they are government entities that may be eligible for Chapter 9 or non-governmental borrowers that can file Chapters 7 or 11. Bankruptcy rights are significant because the bond trustee's enforcement of rights and remedies against the MCP (either self-help or judicial) can be limited or thwarted in a bankruptcy filing. Governmental entities may be eligible for Chapter 9, while non-governmental borrowers and obligors may be eligible for Chapter 7 or Chapter 11, each of which imposes distinct constraints on enforcement and recovery. An additional complexity is that Chapter 9 eligibility is governed by state law and varies across jurisdictions[1].

Within Chapter 9, certain pledged revenues may qualify as special revenues, allowing post-petition collection and application to debt service, subject to the debtor's right to retain sufficient revenues to pay necessary operating expenses. As a result, recovery prospects depend not only on whether pledged revenues qualify as special revenues, but also on how operating expenses are defined and applied in bankruptcy, which can give rise to disputes notwithstanding pre-bankruptcy characterizations of operating expenses in the offering documents.

Project Fund Draw Procedures: Role of Independent Construction Monitors

In municipal project financings, analysts should identify and understand the construction draw process set forth in the bond indenture and any third-party disbursement agreements, including how funds are paid out of the project or construction fund under the bond indenture to the issuer, title company, or borrower by the bond trustee.

Most importantly, analysts should review the draw process to assess whether there are adequate independent verifications and documentation to support the bond trustee releasing construction funds, thereby ensuring the construction project is completed on time and on budget. This due diligence may be made easier with a third-party construction monitor that can provide monthly construction progress reporting, review all draw and payment applications, verify the general contractor's compliance with the construction contracts, and approve any proposed change orders to the original project construction budget.

For more information on documentation and verifications that should be assessed in project fund draw procedure, please see Appendix D: Documentation & Verification When Assessing Project Fund Draws.

Gross Versus Net Revenue Pledges

As stated above, gross revenues and net revenues are not defined in UCC-9, which can lead to ambiguity in UCC-9 Collateral descriptions in the offering documents. While "gross revenues" may seem intuitive, analysts should ensure its definition is in the offering documents/security agreements and contains the proper UCC-9 Collateral description as described above. For a "net revenue" pledge, analysts should verify the offering documents/security agreement provides a full description of all

[1] Municipalities In Distress (2nd Edition), authored by Chapman & Cutler LLP (2016)

expenses, adjustments, and exclusions to be assessed against "gross revenues" to create the UCC-9 security interest in "net revenues". Furthermore, the offering documents and the bond documents should state where and how the calculation of "gross revenues" and "net revenues" will be disclosed to bondholders in the future financial reporting. A sample calculation in the offering documents would aid analysts' understanding and evaluation of "net revenues". Offering documents may also refer to "special revenues" which is only relevant in a Chapter 9 bankruptcy proceeding. See NFMA's 2017 *White Paper on General Obligation Bond Payments: Statutory Liens and Related Disclosures* regarding "special revenues" in Chapter 9 Bankruptcy.

Intellectual Property Collateral

Intellectual Property (IP) may be needed to operate the equipment and systems of a project which constitutes part of the MCP. It is important for the bond trustee to have control over the use of the IP in the event the bond trustee needs to complete, operate and sell the project after a default by the borrower.

Usually, the bond trustee gets a UCC-9 security interest in IP as part of an "all-assets" security agreement from the issuer/borrower. However, IP that qualifies for federal protection such as a patent, copyright, or trade name may require a special security interest filing with the US Patent and Trademark Office to get the proper perfection and collateral protection for the bond trustee.

Assessing the importance of IP to the collateral package, as well as the enforceability of IP rights following default is crucial to understanding recovery prospects.

The Benefits of a Negative Pledge

A negative pledge covenant in a municipal bond transaction restricts a borrower from granting additional liens or security interests that could create competing or priority claims against the MCP, except as expressly permitted under the bond documents. A negative pledge helps preserve collateral priority and protect recovery prospects by limiting the ability of future creditors to encumber pledged assets.

Permitted exceptions, like purchase-money security interests or coordinating arrangements with other lenders, may be necessary for project operations or financing and are typically governed by specified carve-outs or intercreditor agreements. The effectiveness of a negative pledge therefore depends on the scope of permitted liens and the extent to which any intercreditor arrangements preserve the bond trustee's rights with respect to the collateral.

Recourse Versus Debt

Debt issued in a municipal bond transaction can either be recourse or non-recourse to the issuer and borrower. If the debt is non-recourse, the issuer or borrower is only liable to pay the debt from the MCP and its liquidation proceeds, and not from any other assets/funds of the issuer or borrower. Consequently, in the case of non-recourse debt, bondholders can only look to the collateral package for repayment of the municipal bond debt, making the value and liquidity of the collateral package critically important to assessing the credit and repayment risk of the offered municipal bonds.

On the other hand, if the municipal bond debt is recourse to the issuer or borrower, the bond trustee can look at all the assets of the issuer or borrower to satisfy the municipal bond debt and not just the collateral package.

Ambiguities on the recourse or non-recourse nature of the debt should be clarified with the assistance of counsel.

Statutory Intercepts & Statutory Liens

Statutory intercept agreements are used when an issuer or borrower pledges government revenue, certain state or federal funding, or tax payments to the bond trustee as security for a municipal bond transaction. Where authorized by state statute, the intercept might create a statutory lien if the statute uses the word "lien" and the lien arises at the time the statutory intercept is created (and not only when the intercept is requested by the bond trustee). However, a statutory intercept does not guarantee a statutory lien exists. Accordingly, municipal collateral recovery analysis depends on whether the statutory intercept is based on a clear statutory lien and if that statutory lien needs to be perfected under applicable state law.

Multi-Party Collateral Package Pledges: Collateral Agency Agreements & Intercreditor Agreements; Subordination Agreements

In complex municipal bond transactions, the bond trustee may be required to allow another lender to have a lien, pledge, or security interest in all or part of the collateral package (shared collateral). These arrangements are typically documented in collateral agency agreements or intercreditor agreements, which govern relative priority, control rights, and access to collateral and proceeds, including in transactions involving interest rate swaps or other financing support. In other cases, a third-party creditor may subordinate its lien or security interest to the bond trustee pursuant to a subordination agreement, altering recovery outcomes without eliminating competing claims. The presence and material terms of these agreements directly affect collateral enforceability and recovery and therefore form a critical component of collateral package analysis.

Business Interruption Insurance Coverage for the Collateral Package

Business interruption insurance supports preservation of the collateral package by providing funds to cover operating shortfalls and debt service during periods when a project, system, or facility is unable to operate due to a covered event. In evaluating its effectiveness, attention should be paid to the scope of covered losses, the waiting period before payments commence, and whether coverage duration aligns with the expected recovery timeline. Lengthy waiting periods can shift near-term liquidity risk to pledged funds such as the debt service reserve. Where business interruption insurance is material to credit support, its existence, key terms, and treatment of the bond trustee should be clearly disclosed.

Cyber Risk Insurance & Terrorism Risk Insurance

Cyber risk insurance supports preservation of the collateral package by mitigating operational and financial disruption arising from cyber incidents that impair systems required to operate projects, collect revenues, or maintain assets. Coverage is most relevant where cyber events could interrupt revenue generation, damage data or control systems, or trigger material remediation costs that weaken debt service capacity. Evaluation should focus on whether coverage scope, limits, exclusions, and insurer conditions meaningfully protect against prolonged operational disruption.

Where terrorism risks are material to the financed assets, such as high profile or historic assets or utility structures, their treatment and any related insurance coverage should be clearly disclosed.

IX. CONTINUING DISCLOSURE & POST-CLOSING COLLATERAL PACKAGE REPORTING

Continuing disclosure under SEC Rule 15c2-12 provides limited insight into changes affecting the condition, composition, or enforceability of a collateral package over time. Because material event disclosures and annual filings are not designed to capture collateral-specific developments, post-closing changes to the collateral package may occur without timely visibility to the bond trustee or bondholders. As a result, collateral evaluations should recognize the limits of existing disclosure frameworks and the potential for adverse changes in the collateral package, and enforcement and recovery risk to evolve after closing. The absence of effective post-closing transparency underscores the importance of front-end collateral structuring and documentation precision. To help analysts obtain better post-closing reporting, see Appendix E "Sample Post-Closing Collateral Package Monitoring Provisions" which can be delivered to the underwriting team for inclusion in the relevant bond documents.

REFERENCES

Municipalities In Distress (2nd Edition), authored by Chapman & Cutler LLP (2016)

NFMA *White Paper on General Obligation Bond Payments: Statutory Liens and Related Disclosures*, Dated December 2017

Copyright 2026 National Federation of Municipal Analysts. All Rights Reserved.

NFMA constituent societies, individual members or their firms may not agree with all provisions in this White Paper. The NFMA is not a regulatory agency and compliance with the White Paper 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.

APPENDIX A

Roles, Representations & Responsibilities of Counsel in Municipal Bond Transactions

Each party in a municipal bond transaction is typically represented by an attorney. Notably, lawyers generally have responsibility to only one client, so analysts should not assume any given lawyer in a municipal bond transaction represents its interest, other than purchaser's counsel. Analysts can request the help of purchaser's counsel (legal fees paid by the borrower) for transactions that involve complex collateral packages to better understand and analyze the collateral package and organize and complete the documentation process before closing of the municipal bond transactions. The following includes brief explanations of the roles of various counsel in municipal bond transactions but is not an exhaustive description of such roles.

I. Bond Counsel

Bond counsel advises on the tax-exempt status of bonds to the extent applicable, prepares the indenture and loan agreement and other security documents, and issues a legal opinion on the tax-exempt nature of the bond financing, affirming validity, tax-exempt status, and authority to issue bonds. Bond counsel drafts and reviews legal documents like the bond resolution, trust indenture, and related non-financial information or tax disclosure in the official statement. Additionally, Bond counsel opines in a supplemental bond counsel opinion that, among other things, the summaries of bond documents and potentially certain other security agreements and the bonds are true and correct summaries of what is purported to be summarized therein, and the tax matters disclosure accurately reflects matters of tax law reflected in bond counsel's approving opinion.

II. Issuer Counsel

Issuer counsel is a distinct yet complementary role to that of bond counsel. While bond counsel focuses on the legality and tax aspects of the municipal bond issuance, issuer counsel represents the issuer's interests. Issuer counsel's responsibility is to advise and represent the issuer, provide opinions establishing authority and approval of the municipal bond transactions, and disclose that there was no significant litigation impacting the issuer that would have an adverse impact on the bonds.

III. Conduit Borrower's Counsel

Conduit borrower's counsel gives an authorization and enforceability opinion on the financing documents with respect to the conduit borrower and should provide an opinion with respect to the security interests on collateral.

IV. Underwriter's Counsel

Underwriter's counsel assists the underwriter in undertaking its due diligence obligations in order to ensure accuracy of the information in the offering documents which it is often responsible for drafting. Underwriter's counsel also confirms a continuing disclosure agreement has been agreed to, in order to ensure ongoing disclosure pursuant to securities law requirements. Underwriter's counsel typically drafts the official statement and conducts due diligence for the underwriter.

V. Purchaser's Counsel

Purchaser's counsel represents the interests of bond purchasers and seeks to identify and address risks involving the collateral package. Analysts should request the assistance of purchaser's counsel whenever the collateral package is complex and ensure that purchaser's counsel is retained early enough

in the process to negotiate critical document provisions and have a meaningful impact on resolving collateral package risks. Purchaser's counsel facilitates due diligence by reviewing legal documents and other offering documents to help identify potential legal and possibly financial risks to the bond purchasers.

[THIS SPACE INTENTIONALLY LEFT BLANK]

APPENDIX B

Documentation Needed to Create UCC-9 Security Interests

I. Security Agreement

A written security agreement (the personal property analog to a mortgage) that reasonably identifies the UCC Collateral covered by the security agreement and identifies the debt being secured. A security agreement can include after-acquired property and future advances of debt by the bond trustee, but both provisions must be clearly stated in the security agreement.

II. UCC Financing Statement Filings

Although a security agreement is a valid contract between the borrower and the secured party, it does not provide complete security unless the security interest is perfected. Generally, perfection is achieved by filing a UCC financing statement. The UCC Collateral must be identified in the UCC financing statement using the current UCC Collateral descriptions. The best practice is to use the same description in both the security agreement and the UCC financing statement.

Analysts should verify that bond documentation uses the current UCC-9 descriptions. Many older indentures, loan agreements, mortgages, deeds of trust, or other documentation have not been updated to use the current UCC-9 Collateral descriptions.

III. Exceptions To Perfection by UCC Financing Statement Filing

There are a few types of UCC Collateral for which a financing statement cannot perfect the bond trustee's security interest such as deposit accounts, cash and rights to draw under letters of credit (called "letter of credit rights"). In those cases, perfection is achieved by establishing "control" of the UCC-9 Collateral. Control by the bond trustee is usually established by a written agreement with the third party holding the UCC-9 Collateral for the benefit of the bond trustee, though the rights of the third party may conflict with the bond trustee's rights. Consequently, the offering documents should disclose how the bond trustee will perfect its security interest in each type of UCC-9 Collateral described in the collateral package.

Generally, UCC financing statements must be refiled every five years to maintain perfection of the UCC-9 security interests (when not required through control). However, such UCC financing statements do not expire for thirty years in "public finance transactions" if provided for in the given state's UCC-9, and there may be other special UCC-9 rules for filings by "transmitting utilities".

IV. Government Revenue Pledges Under UCC-9

UCC-9 has no special term for government revenues, receivables, or funds pledged under government payment programs. To properly describe a UCC-9 security interest in government revenues (e.g., taxes, revenues, etc.), the UCC-9 Collateral description should utilize the prescribed UCC-9 Collateral definitions to cover "accounts, payment intangibles, cash proceeds, instruments, and depository accounts". Nevertheless, the UCC-9 Collateral description should also include a description of the specific governmental revenue streams or sources that are the subject of the UCC-9 security interest.

The analyst should confirm these UCC-9 security interest terms are used consistently in the security agreement, the UCC financing statement, and the definition of the "trust estate" in the bond indenture.

V. Purchase Money Security Interests

To obtain all the benefits of a UCC-9 security interest in equipment to be financed by the municipal bond transaction and to identify any existing equipment that is part of the collateral package, offering documents should contain a listing of the material equipment collateralizing the municipal bond transactions. The equipment list should include the name, manufacturer, and model of the equipment, acquisition cost, quantity, age, and the borrower's estimate of the market value of the equipment. This equipment list will give analysts an idea of how much collateral value the equipment provides and can be used to help support the "fully secured" status of the collateral package (especially for secured claim fights under Section 506 of the U.S. Bankruptcy Code.) The offering documents should also disclose whether an equipment appraisal has been obtained for any existing equipment and summarize the results of that appraisal. Analysts should consider reviewing any equipment appraisal to better understand the equipment valuations.

However, it should be noted that both present and future UCC-9 purchase money security interests by a third party (often an equipment vendor) are often carved out of the collateral package.

[THIS SPACE INTENTIONALLY LEFT BLANK]

APPENDIX C

Pre-Closing & Post-Closing Collateral Package Risks

I. Pre-closing Collateral Package Risks

A. Failure to have the title insurance commitment exceptions reviewed and removed or insured over. This is needed to verify the required priority of the bond trustee's mortgage or deed of trust.
B. Errors in the legal description of real estate. Errors can be eliminated by requiring a survey, and conforming the real estate description to the survey.
C. Failure to use required UCC-9 Collateral descriptions in the bond indenture, security agreement, UCC financing statements, and other bond documents.
D. Failure to get landowner SNDA agreements for all leasehold mortgages/deeds of trust.
E. Failure to obtain Tri-Party Agreements for all collateral assignments of contracts on all material project agreements.
F. Failure to include and properly describe the entire MCP in the "trust estate" definition in the bond indenture.
G. Failure to undertake a complete UCC and lien search for the issuer, each borrower and each pledgor to determine if there are competing security interests in the UCC-9 Collateral (generally, the first to file a UCC has priority), and removal of problematic filings/liens.
H. Failure of bond trustee to obtain a DACA with each local bank used to receive or collect cash, money, revenues and funds that are part of the MCP.
I. Failure of bond trustee to get an initial equipment list to identify the equipment collateral pledged to be purchased with bond proceeds.
J. Failure to file UCC financing statements in the correct locations for each party granting a UCC-9 security interest to the bond trustee.

II. Post-closing Collateral Package Risks

A. Failure to file continuations of UCC financing statements which usually occurs five years after the original filing date (but certain states may have longer periods).
B. Failure of bond trustee to monitor the location and condition of physical assets (real estate, equipment) and creation of new borrower depository accounts in the collateral package.

[THIS SPACE INTENTIONALLY LEFT BLANK]

APPENDIX D

Documentation & Verification When Assessing Project Fund Draws

I. A written payment application made by the contractor at the unit prices specified in the construction agreement, with signoffs from the owner/borrower, general contractor, architect, and the independent construction monitor that each has accepted the work done, cost of work performed, and its conformity to the construction contract;

II. An updated construction budget and completion schedule reflecting actual approved work performed, and the current allocation of the overall contract price among the various items of work required under the construction contract (including any approved change orders). These updated construction cost allocations should provide the basis for approving future progress payments under the construction contract;

III. General contractor warranty that the work performed meets the requirements of the construction contracts and certifies that the existing construction budget and completion schedule remains accurate (subject to updates for approved change orders), that no change orders have been approved by the borrower unless the independent construction monitor has approved the change order cost breakdowns (or otherwise as permitted in the bond documents), and that the payment application accurately reflects the work completed on the project in accordance with the construction documents as of the date of the payment request; and

IV. Written confirmation that the title agent has received the appropriate partial/full contract lien waivers and is able to issue a clean "date down" endorsement to the title insurance policy reflecting no construction or mechanics liens or other unpermitted title exceptions/encumbrances.

[THIS SPACE INTENTIONALLY LEFT BLANK]

APPENDIX E

Sample Post-Closing Collateral Package Monitoring Provisions

To allow analysts to monitor MCPs after closing, the trust indenture and/or loan agreement will need to contain certain post-closing collateral package monitoring provisions.

I. Upon the written request of the trustee to the issuer and/or the borrower annually (and at any time after an event of default has occurred hereunder), the issuer and/or the borrower shall deliver to the trustee within thirty (30) days of such request the following items:

A. An updated list of the equipment that is subject to any security interest or statutory lien in favor of the trustee identifying its location and condition, and any material disposition of any equipment in the prior twelve months
B. An update of the UCC and lien searches conducted for the trustee at closing of the bond debt
C. The status of any contracts or agreements collaterally assigned to the trustee as regards any actual or threatened event(s) of default, terminations and material changes
D. A listing of all pending and approved change orders to the amounts required to complete any construction, demolition or repairs being funded by the bond debt
E. An updated insurance certificate evidencing the trustee as a lender's loss payee on any physical property in which the trustee has a security interest, statutory lien or mortgage lien as required in the bond documents which notes the amount of any insurance limits, deductibles and co-insurance provisions
F. A listing of all the depository accounts currently maintained by the issuer and borrower(s)
G. A collateral assignment of any new and material contracts entered into by the issuer and the borrower respecting the construction, demolition and/or repair of any projects funded by the bond debt.

II. On a [quarterly/semi-annual] basis, the trustee shall post to EMMA® the amounts currently in the funds held by the trustee, and a summary of any withdrawals, deposits and transfers of funds in those accounts for review of bondholders.

III. The issuer and borrower(s) shall promptly notify the trustee in writing and by a posting on EMMA within ten (10) business days if any general contractor, material sub-contractor or supplier is terminated or replaced, and a brief explanation for such termination.

IV. If the issuer and borrower(s) establish depository accounts that contain any cash, funds, collections on, or proceeds of any property that are subject to a security interest, lien or pledge in favor of the trustee (collectively "Cash Collateral"), the issuer and borrower(s) shall obtain a depository control agreement from that depository bank satisfactory to the trustee within sixty (60) days, or the trustee can require the issuer and borrower(s) to close that depository account and deposit all Cash Collateral with the trustee.

V. If any real property or equipment is mortgaged in favor of the trustee, the trustee shall have the right (or retain a firm) to inspect and obtain a physical needs assessment of the real property and equipment once every five years, upon any default hereunder, or if requested by bondholders after the real property or equipment has suffered any material damage.

VI. Unless approved in writing by the trustee, the issuer and borrower(s) shall not subject any of its property to a security interest, lien or pledge with any third party except the following: (a) purchase money security interests on specific equipment and inventory upon ten (10) days prior written notice to the trustee; (b) property that exists as of the date of this indenture that is subject to a lease; and (c) the rights of any depository bank to set-off any account charges.

VII. When property is the subject of construction, demolition or repairs, any request for funds held by the trustee shall include: (a) a written certification executed by an officer of the borrower that the borrower is not in default under the bond documents, or any agreements respecting the project; (b) a payment application from the party conducting the work outlining the work performed, the cost of the work, and a comparison of the work completed to date relative to the total contract price; (c) a conditional lien waiver accompanying the draw request that has been provided to the trustee; and (d) that no requested change orders for any material amounts are pending.