



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
HOUSING & COMMUNITY DEVELOPMENT DEPARTMENT

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August 25, 2025

Dear Committee Members:

SUBJECT: **MEASURE A1 PROGRAM INCOME EXPENDITURE
REQUIREMENTS**

RECOMMENDATION:

- A. Recommend the Department of Housing and Community Development (HCD) Develop Expenditure Plan for Measure A1 Program Income Consistent with Expenditure Requirements for Measure A1 Bond Proceeds

DISCUSSION/SUMMARY:

In addition to the direct Measure A1 bond proceeds that have funded affordable housing in Alameda County, the County is earning program income from these bond proceeds. This income comes in the form of interest earnings on unspent bond proceeds, repaid loans from homeownership programs, residual receipt payments from affordable rental projects, and program fees charged to developers. To use program income to support HCD's affordable housing programs and priorities, HCD needs to develop an expenditure plan with guidelines that follow best practices and legal guidelines.

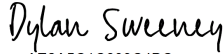
HCD engaged affordable housing consulting firm CSG Advisors (CSG) to review how peer counties use similar program income funding to support housing programs and priorities. CSG discussed this question informally with bond counsel at Orrick, Herrington & Sutcliffe LLP, who has served as bond counsel for the issuance of Measure A1 bonds and for other jurisdiction's bond issuances. In addition, CSG also engaged their network of local government housing departments that have issued affordable housing bonds to learn from them how they spent such revenues. That review found that the best practices for local governments is to reinvest program income from one-time sources to continue to support authorized activities and goals.

To continue to support our efforts at creating affordable housing opportunities for all Alameda County residents, HCD staff recommends that the Measure A1 Oversight Committee affirm that uses of Measure A1 program income and an expenditure plan for those funds continue to align with purposes outlined in Measure A1.



Sincerely,

DocuSigned by:

A handwritten signature in blue ink that reads "Dylan Sweeney". The signature is written in a cursive, flowing style.

AE2A564C609C4BC
Dylan Sweeney, Policy and Programs Manager
Policy and Programs Manager
Housing and Community Development

Enclosure: Memo from CSG Advisors

August 26, 2025 **[DRAFT]**

VIA EMAIL

Dylan Sweeney
Alameda County Housing and Community Development Department
224 W. Winton Avenue, #108
Hayward, CA 94544
dylan.sweeney@acgov.org

RE: Permissible Uses of Various General Obligation Bond-Related Revenues

Dear Mr. Sweeney:

Per your request, CSG Advisors has reviewed information relevant to the potential use of certain revenues collected by the Alameda County in connection with its general obligation ("G.O.") housing bonds. Such program revenues include:

- Interest earnings on unspent G.O. bond proceeds
- Repaid principal from G.O. bond-funded loans
- Interest earnings from G.O. bond-funded loans
- Fees collected pursuant to G.O. bond-funded programs

Specifically, per your request, we have considered whether such revenues may be used for purposes in addition to those explicitly permitted for the bond proceeds themselves (e.g., operation and administration of HCD programs).

Based on our review of relevant documentation and correspondence with knowledgeable parties, we have identified certain limitations and best practices that likely apply to the use of these funds. The following pages detail various aspects of our review, including background information, review methodology, findings, conclusions, recommendations, clarifications, and caveats.

We appreciate the opportunity to investigate these issues for HCD, and we stand ready to answer any questions you may have after reviewing this document.

Sincerely,



Adam F. Cray
Principal
acray@csgadvisors.com

1. BACKGROUND

Alameda County HCD. The Alameda County Housing and Community Development Department (“HCD”) of the Alameda County Community Development Agency is a governmental body created and authorized by state law to coordinate and finance affordable housing development and housing programs for low-income families across Alameda County, California (the “County”). HCD directs state, local, and federal funds to local projects and programs that address the high cost of housing, improve community infrastructure, and prevent displacement.

General Obligation Bond Issuance. On November 8, 2016, the County received voter approval for Measure A1, which authorizes the County to issue bonds in an aggregate principal amount not to exceed \$580 million to provide affordable local housing, prevent displacement of vulnerable populations, provide supportive housing for the County’s homeless population, and help low- and middle-income households purchase homes. Bonds issued pursuant to Measure A1 are backed by the full faith and credit of the County and funded by a levy on the assessed value of taxable property for each year that the bonds are outstanding. Measure A1 Bonds were issued as taxable G.O. bonds.

Measure A1 Bond-Funded Programs. The Measure A1 Affordable Housing Bond funds several County-wide programs to foster development and preservation of affordable housing and expand access to homeownership. Programs supported by Measure A1 funding include the following:

- **Rental Development Fund.** The Rental Development Fund is the largest program of the Measure A1 bond, with a \$425 million allocation divided into a “Regional Pool” and “Base City Allocations.” The Program provides pre-development funding for the development or rehabilitation of rental housing projects that serve households at or below 20% and 60% of area median income (“AMI”) levels and specific target populations (e.g., seniors, people experiencing homelessness, veterans, people with disabilities, transition-aged youth). Funding is awarded to development projects through competitive RFPs by either County region or city.
- **Downpayment Assistance Loan Program (“AC Boost”).** AC Boost provides shared-appreciation, interest-free loans of up to \$210,000 to first-time homebuyers who live or work in Alameda County or have been displaced from Alameda County within the past 10 years. Down payment assistance loans are offered to households earning at or below 120% of AMI with the goal of assisting middle-income homebuyers in building generational wealth and familial stability.
- **Home Preservation Loan Program (“Renew AC”).** Renew AC provides 1% deferred-interest loans to seniors, people with disabilities, and other low-income homeowners (at or below 80% AMI) for eligible home improvement projects specifically to address health and safety conditions in owner-occupied homes. The program also facilitates services to help navigate home improvements, which in some cases means providing temporary housing.
- **Acquisition and Opportunity Fund.** The Acquisition and Opportunity Fund provides short-term predevelopment and site acquisition loans to eligible nonprofit housing developers for the preservation and expansion of affordable housing. The program supports affordable rental housing at the same income levels and serves the same target population as the Rental Development Fund.

[DRAFT]

- **Innovation Fund.** The Innovation Fund provides additional support for innovative solutions in addressing the need for affordable rental housing for the household income levels and target populations of the Rental Housing Development Fund.

Program Revenues. Each of the loan programs described above generates revenues in the form of debt payments on the administered bond-funded loans. This includes repaid loan principal for each of the loan programs described above, and regular interest payments for the multifamily predevelopment loan programs (e.g., Rental Development, Acquisition and Opportunity, and Innovation funds). Additionally, Borrowers receiving G.O. bond program loans may be charged loan fees, so long as such fees are reasonable and are used solely to cover the issuer's cost of administering the programs.

2. METHODOLOGY

CSG conducted extensive research and engaged with various stakeholders to determine and clarify allowable uses for the following revenues generated by G.O. bond-funded programs ("Program Revenues"):

- Interest earnings on unspent G.O. bond proceeds
- Repaid principal from G.O. bond-funded loans
- Interest earnings from G.O. bond-funded loans
- Fees collected pursuant to G.O. bond-funded programs

Key areas of focus included the following:

A. Measure A1 Provisions. CSG began by reviewing the text of Measure A1 and all supplementary documentation to identify the appropriate uses and limitations of bond proceeds as passed by voter majority in 2016.

B. Board Documents and Implementation Policies. Utilizing the County's online public document repository and County webpages, CSG searched relevant legislative and policy documents (including Board of Supervisors resolutions and various bond program implementation policies) for references to the collection and use of G.O. bond revenues.

C. Discussions with Legal Counsel. CSG informally discussed potential constraints on the use of Program Revenues with bond counsel at Orrick, Herrington & Sutcliffe LLP, who served as bond counsel on the issuances for Measure A1 and many other G.O. bonds issued by similar jurisdictions.

D. Experience with Other Jurisdictions. CSG leveraged its considerable experience with other G.O. bond issuance programs throughout California, including informal discussions with peer California issuers—including the City and County of San Francisco, the City of Oakland, the City of Berkeley, and the City of Emeryville—to determine how Program Revenues are allocated and spent in similar jurisdictions.

3. FINDINGS

A. Use of Program Revenues is governed primarily by the relevant ballot measure. For taxable G.O. bonds (such as Measure A1), use of bond proceeds—including Program Revenues—is primarily governed by the California constitution, which broadly requires that such funds are spent pursuant to the uses approved by voters in the relevant ballot measure. In the case of ambiguous or vague language in the ballot measure, the Board of Supervisors (“Board”) resolutions establishing the ballot measure may also be useful. In this case, the ballot language does not appear to address the use of Program Revenues or introduce ambiguity or vagueness as to their use:

ALAMEDA COUNTY AFFORDABLE HOUSING BOND. To provide affordable local housing and prevent displacement of vulnerable populations, including low- and moderate-income households, veterans, seniors, and persons with disabilities; provide supportive housing for homeless people countywide; and help low- and middle-income households purchase homes and stay in their communities; shall the County of Alameda issue up to \$580 million in general obligation bonds to acquire or improve real property, subject to independent citizen oversight and regular audits?

B. Other key documents include the bond election resolution and related implementation policies and Board resolutions. While the ballot measure is the primary source of legal requirements related to use of Program Revenues, the Board resolution establishing the ballot measure provides critical detail on the otherwise broad requirements of the ballot measure language. The various implementation policies created by HCD (many of which were later adopted by the Board) provide even more detail on how to effectuate the intent of the ballot measure and authorizing legislation and should be consulted for guidance on how to use Program Revenues. For example, in the case of Measure A1, the Board resolution and various implementation policies provide that up to 10% of G.O. bond proceeds may be used to develop, deploy, and administer bond-funded programs as well as cover the cost of bond issuance. Similarly, the Board-adopted implementation policies for the Rental Housing Innovation and Opportunity Fund provides, “Repayments to this fund will be used to provide financing for additional projects over time” (Section I.D.5), while the policies for the Homeowner Housing Development Fund Program note the program will “re-use any repaid funds to create additional affordable housing opportunities” (Section H.9). These provisions may be helpful when determining the permissible uses of certain Program Revenues in the absence of further Board action.

C. Assuming a willingness to clarify or amend policies on the part of the Board and HCD, there is little clear-cut legal guidance on the permissible use of Program Revenues. From our experience with similar programs and discussions with bond counsel, we have come to understand that—beyond what can be gleaned from the state constitution or the text of the voter-approved measures (or related resolutions in the case of ambiguity or vagueness)—there is a scarcity of governing law on the use of Program Revenues (one bond lawyer we talked to described this as “an evolving area of practice” with little case law). Consequently, where the Board and HCD are willing to act to clarify or amend previous implementation policies, there appears to be little in the way of clear legal standards to guide how they choose to utilize Program Revenues.

D. In the absence of clear-cut legal guidance, bond counsel recommends a reasonableness analysis by type of Program Revenue. In terms of precisely how Program Revenues may be used, bond counsel explained that the test is essentially whether a court would likely find that the use of the funds is reasonably related to programmatic purposes. That is, while the County is not required to use Program

Revenues to, for example, repay the bonds, the County ought to ensure that all uses are reasonably related to the objectives of the original measure (i.e., acquisition or improvement of real property for affordable housing). From our discussion with bond counsel, the following framework for determining permissible uses of various types of Program Revenues developed:

1. **Interest Earnings on Unspent Bond Proceeds.** Interest accrued on unspent bond proceeds should be treated as bond proceeds, consistent with the terms of the original bond authorization. Accordingly, this revenue should be used for the same purposes as the proceeds of the original bond issuance (i.e., acquisition or improvement of real property for affordable housing).
2. **Repaid Loan Principal.** Loan principal returned to the program (e.g., via regular loan payments or payoffs) should also be spent for the same purposes as the proceeds of the original bond issuance. Many jurisdictions treat this income as part of a revolving endowment, reinvesting it to sustain ongoing program lending.
3. **Loan Interest.** Interest earned on loans of bond proceeds may be used to fund non-capital costs incurred by the program (e.g., operating and administrative costs). However, expenditures for such income should still be limited to program-related purposes, rather than redirected to unrelated County activities (e.g., to the general fund). This could include, for example, operational and administrative costs of HCD related to providing affordable local housing and preventing displacement of vulnerable populations, including low- and moderate-income households, veterans, seniors, and persons with disabilities; providing supportive housing for homeless people countywide; and helping low- and middle-income households purchase homes and stay in their communities.
4. **Program Fees.** Fees collected from program activities may be used to fund non-capital costs incurred by the program (e.g., operating and administrative costs). However, expenditures for such income should still be limited to program-related purposes, rather than redirected to unrelated County activities (e.g., to the general fund). This could include, for example, operational and administrative costs of HCD related to providing affordable local housing and preventing displacement of vulnerable populations, including low- and moderate-income households, veterans, seniors, and persons with disabilities; providing supportive housing for homeless people countywide; and helping low- and middle-income households purchase homes and stay in their communities.

Note that this framework is meant to articulate reasonable uses of Program Funds in light of relevant state law and the language of the bond measure. To the extent that Board resolutions and County implementation policies govern the use of Program Funds, HCD should continue to follow those laws/policies unless and until HCD and/or the Board act to amend them. For example, the language in the implementation policies for the Rental Housing Innovation and Opportunity Fund requiring repayments to be used “to provide financing for additional projects over time” could be construed as requiring all Program Revenues for that program to directly fund program-supported projects (and not, for example, program administrative expenses). Similarly, the provision allowing for 10% of G.O. bond proceeds to be used to develop, deploy, and administer bond-funded programs could be construed as allowing 10% (and only 10%) of Program Revenues to be used for program administration, as opposed to directly funding projects.

E. Peer jurisdictions take a generally conservative approach to their use of Program Revenues. To the extent similar agencies have collected and allocated Program Revenues, they are generally restricted to the uses authorized for the bond proceeds—with the exception of Program Fees in San Francisco, which are used for administrative/operating purposes by the Mayor’s Office of Housing and Community Development. In general, these revenues are committed to the housing projects funded by the bond. The table below summarizes information obtained from informal communications with other local agencies.

Use of Program Revenues in Other Jurisdictions				
	Interest Earnings on Unspent Proceeds	Repaid Loan Principal	Loan Interest	Program Fees
City and County of San Francisco	Restricted to uses authorized for bonds.	Restricted to uses authorized for bonds.	Restricted to uses authorized for bonds.	Collected into general MOHCD operating fund, which is self-appropriating and generally used for administrative/operating purposes.
City of Oakland	Restricted to uses authorized for bonds.	Restricted to uses authorized for bonds.	Restricted to uses authorized for bonds.	Restricted to uses authorized for bonds.
City of Berkeley	<i>Policy unclear from initial discussions. Requested additional information.</i>	Only one loan repayment collected so far; staff anticipate such funds would be committed to future housing projects under the measure (i.e., uses authorized for the bonds).	<i>Policy unclear from initial discussions. Requested additional information.</i>	No fees collected on bond-funded housing development projects.
City of Emeryville	Generating investment proceeds but allocation policy not determined under expenditure plan; funds a likely to be used for purposes authorized for the bonds.	No revenues collected to date; allocation policy not determined under expenditure plan. Bond proceeds mostly programmed for specific projects and small DPA loans, neither of which are likely to generate significant revenues.	No revenues collected to date; allocation policy not determined under expenditure plan. Bond proceeds mostly programmed for specific projects and small DPA loans, neither of which are likely to generate significant revenues.	No revenues collected to date; allocation policy not determined under expenditure plan.

4. CONCLUSIONS AND RECOMMENDATIONS

Based on our research, there are ways to use Program Revenues to support HCD program operations and administration, provided such uses remain consistent with:

- bond counsel advice regarding potential uses by revenue type and
- relevant Board resolutions and program policies.

Ensuring proposed uses of Program Funds are consistent with bond counsel advice appears to be a matter of applying the reasonableness framework described in Section 3D above, wherein use of interest earnings on unspent bond proceeds and repaid loan principal are both treated as bond proceeds—and thus relegated to use for the same purposes as the principal bond issuance¹—and loan interest and program fees may be used to fund non-capital costs incurred by HCD, such as operating and administrative expenses, for affordable housing programs.

Ensuring proposed uses of Program Funds are consistent with relevant Board resolutions and program policies likely involves a legal review of such resolutions and policies and, perhaps, action by the Board and HCD to align previous statements of policy with their intent moving forward.

Recommended Next Steps. Before moving forward with any plan to utilize Program Revenue to support HCD operations and administration, we recommend HCD take the following actions:

- ✓ **Identify All Proposed Uses.** Identify the universe of potential uses HCD proposes for each type of Program Revenue (i.e., is HCD looking to use these funds to support affordable housing programs like those described in the bond measure, or is it looking use the funds for broader purposes?)
- ✓ **Identify the Scale of Available Revenues.** Estimate the amount of current and future funds available from each type of Program Revenue to gauge the potential benefits of allocating these funds for purposes other than directly supporting affordable housing development.
- ✓ **Confirm Overall Analytical Framework.** Confirm with bond counsel that the framework described in Section D above fully and accurately represents their advice on how to treat each type of Program Revenue. Also, ask bond counsel to opine on whether the 10% allowance for development, deployment, and administration of bond-funded programs (see footnote 1 below) means that 10% of Program Revenues can be used for administration of bond-funded programs.
- ✓ **Weigh Risks Against Benefits.** In consultation with bond counsel, weigh the risks of allocating each type of Program Revenue for the proposed purposes against potential benefits.
- ✓ **Confirm if New Board Resolutions and/or Implementation Policies are Necessary.** Given that previous Board resolutions and/or HCD policies may place limitations on use of Program Revenues beyond what is described in the bond measure,² HCD should confirm with County counsel whether new Board resolutions and/or implementation policies are necessary or prudent when defining permissible uses of Program Revenues.

¹ Since the Board allowed 10% of original G.O. bond proceeds to be used to develop, deploy, and administer bond-funded programs, arguably, 10% of interest earnings on unspent bond proceeds and repaid loan principal could be used for such purposes as well. Ultimately, this a question for bond counsel and County legal counsel to resolve.

² e.g., the provision in the Rental Housing Innovation and Opportunity Fund implementation policies requiring repayments to be used “to provide financing for additional projects over time” described in Section 3B above

5. CLARIFICATIONS AND CAVEATS

Please note that this is not a legal opinion and should not be construed as such. CSG is not a law firm and cannot opine on the legality of any course of action of HCD or the County. We offer this research and analysis solely as registered municipal advisors experienced with housing bond issuance who have informally conferred with the County's bond counsel about these issues. As described in Section 4 above, we recommend HCD consult with bond counsel and County counsel before moving forward with any plan to utilize Program Revenue to support HCD operations and administration.

August 26, 2025 **[DRAFT]**

VIA EMAIL

Dylan Sweeney
Alameda County Housing and Community Development Department
224 W. Winton Avenue, #108
Hayward, CA 94544
dylan.sweeney@acgov.org

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Program Revenues. Each of the loan programs described above generates revenues in the form of debt payments on the administered bond-funded loans. This includes repaid loan principal for each of the loan programs described above, and regular interest payments for the multifamily predevelopment loan programs (e.g., Rental Development, Acquisition and Opportunity, and Innovation funds). Additionally, Borrowers receiving G.O. bond program loans may be charged loan fees, so long as such fees are reasonable and are used solely to cover the issuer’s cost of administering the programs.

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3. FINDINGS

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B. Other key documents include the bond election resolution and related implementation policies and Board resolutions. While the ballot measure is the primary source of legal requirements related to use of Program Revenues, the Board resolution establishing the ballot measure provides critical detail on the otherwise broad requirements of the ballot measure language. The various implementation policies created by HCD (many of which were later adopted by the Board) provide even more detail on how to effectuate the intent of the ballot measure and authorizing legislation and should be consulted for guidance on how to use Program Revenues. For example, in the case of Measure A1, the Board resolution and various implementation policies provide that up to 10% of G.O. bond proceeds may be used to develop, deploy, and administer bond-funded programs as well as cover the cost of bond issuance. Similarly, the Board-adopted implementation policies for the Rental Housing Innovation and Opportunity Fund provides, “Repayments to this fund will be used to provide financing for additional projects over time” (Section I.D.5), while the policies for the Homeowner Housing Development Fund Program note the program will “re-use any repaid funds to create additional affordable housing opportunities” (Section H.9). These provisions may be helpful when determining the permissible uses of certain Program Revenues in the absence of further Board action.

C. Assuming a willingness to clarify or amend policies on the part of the Board and HCD, there is little clear-cut legal guidance on the permissible use of Program Revenues. From our experience with similar programs and discussions with bond counsel, we have come to understand that—beyond what can be gleaned from the state constitution or the text of the voter-approved measures (or related resolutions in the case of ambiguity or vagueness)—there is a scarcity of governing law on the use of Program Revenues (one bond lawyer we talked to described this as “an evolving area of practice” with little case law). Consequently, where the Board and HCD are willing to act to clarify or amend previous implementation policies, there appears to be little in the way of clear legal standards to guide how they choose to utilize Program Revenues.

D. In the absence of clear-cut legal guidance, bond counsel recommends a reasonableness analysis by type of Program Revenue. In terms of precisely how Program Revenues may be used, bond counsel explained that the test is essentially whether a court would likely find that the use of the funds is reasonably related to programmatic purposes. That is, while the County is not required to use Program

Revenues to, for example, repay the bonds, the County ought to ensure that all uses are reasonably related to the objectives of the original measure (i.e., acquisition or improvement of real property for affordable housing). From our discussion with bond counsel, the following framework for determining permissible uses of various types of Program Revenues developed:

- 1. Interest Earnings on Unspent Bond Proceeds.** Interest accrued on unspent bond proceeds should be treated as bond proceeds, consistent with the terms of the original bond authorization. Accordingly, this revenue should be used for the same purposes as the proceeds of the original bond issuance (i.e., acquisition or improvement of real property for affordable housing).
- 2. Repaid Loan Principal.** Loan principal returned to the program (e.g., via regular loan payments or payoffs) should also be spent for the same purposes as the proceeds of the original bond issuance. Many jurisdictions treat this income as part of a revolving endowment, reinvesting it to sustain ongoing program lending.
- 3. Loan Interest.** Interest earned on loans of bond proceeds may be used to fund non-capital costs incurred by the program (e.g., operating and administrative costs). However, expenditures for such income should still be limited to program-related purposes, rather than redirected to unrelated County activities (e.g., to the general fund). This could include, for example, operational and administrative costs of HCD related to providing affordable local housing and preventing displacement of vulnerable populations, including low- and moderate-income households, veterans, seniors, and persons with disabilities; providing supportive housing for homeless people countywide; and helping low- and middle-income households purchase homes and stay in their communities.
- 4. Program Fees.** Fees collected from program activities may be used to fund non-capital costs incurred by the program (e.g., operating and administrative costs). However, expenditures for such income should still be limited to program-related purposes, rather than redirected to unrelated County activities (e.g., to the general fund). This could include, for example, operational and administrative costs of HCD related to providing affordable local housing and preventing displacement of vulnerable populations, including low- and moderate-income households, veterans, seniors, and persons with disabilities; providing supportive housing for homeless people countywide; and helping low- and middle-income households purchase homes and stay in their communities.

Note that this framework is meant to articulate reasonable uses of Program Funds in light of relevant state law and the language of the bond measure. To the extent that Board resolutions and County implementation policies govern the use of Program Funds, HCD should continue to follow those laws/policies unless and until HCD and/or the Board act to amend them. For example, the language in the implementation policies for the Rental Housing Innovation and Opportunity Fund requiring repayments to be used “to provide financing for additional projects over time” could be construed as requiring all Program Revenues for that program to directly fund program-supported projects (and not, for example, program administrative expenses). Similarly, the provision allowing for 10% of G.O. bond proceeds to be used to develop, deploy, and administer bond-funded programs could be construed as allowing 10% (and only 10%) of Program Revenues to be used for program administration, as opposed to directly funding projects.

E. Peer jurisdictions take a generally conservative approach to their use of Program Revenues. To the extent similar agencies have collected and allocated Program Revenues, they are generally restricted to the uses authorized for the bond proceeds—with the exception of Program Fees in San Francisco, which are used for administrative/operating purposes by the Mayor’s Office of Housing and Community Development. In general, these revenues are committed to the housing projects funded by the bond. The table below summarizes information obtained from informal communications with other local agencies.

Use of Program Revenues in Other Jurisdictions				
	Interest Earnings on Unspent Proceeds	Repaid Loan Principal	Loan Interest	Program Fees
City and County of San Francisco	Restricted to uses authorized for bonds.	Restricted to uses authorized for bonds.	Restricted to uses authorized for bonds.	Collected into general MOHCD operating fund, which is self-appropriating and generally used for administrative/operating purposes.
City of Oakland	Restricted to uses authorized for bonds.	Restricted to uses authorized for bonds.	Restricted to uses authorized for bonds.	Restricted to uses authorized for bonds.
City of Berkeley	<i>Policy unclear from initial discussions. Requested additional information.</i>	Only one loan repayment collected so far; staff anticipate such funds would be committed to future housing projects under the measure (i.e., uses authorized for the bonds).	<i>Policy unclear from initial discussions. Requested additional information.</i>	No fees collected on bond-funded housing development projects.
City of Emeryville	Generating investment proceeds but allocation policy not determined under expenditure plan; funds a likely to be used for purposes authorized for the bonds.	No revenues collected to date; allocation policy not determined under expenditure plan. Bond proceeds mostly programmed for specific projects and small DPA loans, neither of which are likely to generate significant revenues.	No revenues collected to date; allocation policy not determined under expenditure plan. Bond proceeds mostly programmed for specific projects and small DPA loans, neither of which are likely to generate significant revenues.	No revenues collected to date; allocation policy not determined under expenditure plan.

4. CONCLUSIONS AND RECOMMENDATIONS

Based on our research, there are ways to use Program Revenues to support HCD program operations and administration, provided such uses remain consistent with:

- bond counsel advice regarding potential uses by revenue type and
- relevant Board resolutions and program policies.

Ensuring proposed uses of Program Funds are consistent with bond counsel advice appears to be a matter of applying the reasonableness framework described in Section 3D above, wherein use of interest earnings on unspent bond proceeds and repaid loan principal are both treated as bond proceeds—and thus relegated to use for the same purposes as the principal bond issuance¹—and loan interest and program fees may be used to fund non-capital costs incurred by HCD, such as operating and administrative expenses, for affordable housing programs.

Ensuring proposed uses of Program Funds are consistent with relevant Board resolutions and program policies likely involves a legal review of such resolutions and policies and, perhaps, action by the Board and HCD to align previous statements of policy with their intent moving forward.

Recommended Next Steps. Before moving forward with any plan to utilize Program Revenue to support HCD operations and administration, we recommend HCD take the following actions:

- ✓ **Identify All Proposed Uses.** Identify the universe of potential uses HCD proposes for each type of Program Revenue (i.e., is HCD looking to use these funds to support affordable housing programs like those described in the bond measure, or is it looking use the funds for broader purposes?)
- ✓ **Identify the Scale of Available Revenues.** Estimate the amount of current and future funds available from each type of Program Revenue to gauge the potential benefits of allocating these funds for purposes other than directly supporting affordable housing development.
- ✓ **Confirm Overall Analytical Framework.** Confirm with bond counsel that the framework described in Section D above fully and accurately represents their advice on how to treat each type of Program Revenue. Also, ask bond counsel to opine on whether the 10% allowance for development, deployment, and administration of bond-funded programs (see footnote 1 below) means that 10% of Program Revenues can be used for administration of bond-funded programs.
- ✓ **Weigh Risks Against Benefits.** In consultation with bond counsel, weigh the risks of allocating each type of Program Revenue for the proposed purposes against potential benefits.
- ✓ **Confirm if New Board Resolutions and/or Implementation Policies are Necessary.** Given that previous Board resolutions and/or HCD policies may place limitations on use of Program Revenues beyond what is described in the bond measure,² HCD should confirm with County counsel whether new Board resolutions and/or implementation policies are necessary or prudent when defining permissible uses of Program Revenues.

¹ Since the Board allowed 10% of original G.O. bond proceeds to be used to develop, deploy, and administer bond-funded programs, arguably, 10% of interest earnings on unspent bond proceeds and repaid loan principal could be used for such purposes as well. Ultimately, this a question for bond counsel and County legal counsel to resolve.

² e.g., the provision in the Rental Housing Innovation and Opportunity Fund implementation policies requiring repayments to be used “to provide financing for additional projects over time” described in Section 3B above

5. CLARIFICATIONS AND CAVEATS

Please note that this is not a legal opinion and should not be construed as such. CSG is not a law firm and cannot opine on the legality of any course of action of HCD or the County. We offer this research and analysis solely as registered municipal advisors experienced with housing bond issuance who have informally conferred with the County's bond counsel about these issues. As described in Section 4 above, we recommend HCD consult with bond counsel and County counsel before moving forward with any plan to utilize Program Revenue to support HCD operations and administration.