

developer. This is important to clarify because, in some cases, the Special Purpose Entity may not be able to satisfy the statutory requirements for transfer to a third-party entity, such as demonstrating a “satisfactory history of constructing or operating an affordable housing development;” this is because a new Special Purpose Entity is created for each project and would not have a history of past projects.

*FTA Response:*

i. FTA recognizes that this is a common concern among transit agencies and stakeholders interested in utilizing this provision. FTA further notes that Special Purpose Entities receiving LIHTC’s may take many different forms. In interpreting Special Purpose Entities formed for the purpose of utilizing LIHTCs under this provision, FTA will look to which party (*i.e.*, public or nonprofit vs. for-profit entity) has control over the project. Ownership may be transferred to a for-profit entity to facilitate the use of tax credits for the project only if the public or nonprofit entity demonstrates in its application that it retains control over the property (*i.e.*, still considered “owned” for purposes of this provision). Sufficient control may be satisfied by any of the following: (1) a fee simple interest in the Project property, (2) owns 51 percent or more of the general partner interests in a limited partnership or 51 percent or more of the managing member interests in a limited liability company with all powers of the general partner or managing member, (3) owns a lesser percentage of the general partner or managing member interests and holds control rights, or (4) owns 51 percent or more of all ownership interests in a limited partnership or limited liability company and holds certain control rights.

“Control rights,” as referenced above, include control over leasing of the project (*e.g.*, exclusively maintaining and administering the waiting list, performing eligibility determinations) and consent rights over certain areas, such as changing the number of affordable housing units, setting utility allowances, selecting the management agent, or setting the operating budget. FTA will treat a Special Purpose Entity as a nonprofit entity under this asset disposition provision if they meet the above requirements.

### III. Interim Guidance

FTA has reviewed and deliberated over the public comments received for the Proposed Asset Disposition Guidance. All feedback was appreciated and informative for further shaping this guidance. FTA makes made the

following amendments in the Interim Asset Disposition Guidance:

The Interim Asset Disposition Guidance is amended to provide a response to comments requesting that Special Purpose Entities using Low Income Housing Tax Credits (LIHTC) are treated as a nonprofit entity under this provision. FTA will allow Special Purpose Entities using LIHTCs to be treated as nonprofits if the nonprofit entity retains control over the project, as detailed above.

Additionally, FTA amends the guidance to provide additional clarity on the area median income (AMI) percentage requirements. Some commenters voiced confusion over the statutory requirements that 40 percent of the housing units offered must be legally binding affordability restricted to tenants and owners at or below 60 percent AMI, which shall include at least 20 percent offered to tenants and owners at or below 30 percent AMI. FTA will clarify that this is 20 percent out of the 40 percent, not 20 percent out of the totality of the project.

On the eligibility requirements to use this provision, FTA amends the guidance to clarify that this provision applies to assets that have been acquired or improved with FTA assistance, including FTA-administered Federal funds that have been flexed over from other Operating Administrations, such as Federal Highway Administration (FHWA). However, this provision does not apply to assets acquired or improved with FTA-administered RAISE grants, as discussed above.

FTA amends the guidance to provide additional clarifying language on the options available for compliance monitoring during the 30-year term, to include third party oversight.

**Nuria I. Fernandez,**  
*Administrator.*

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## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0661]

### Agency Information Collection Activity Under OMB Review: State Veterans Homes Construction & Acquisition Grant Program (SVHCGP)

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of

1995, this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

**DATES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Refer to “OMB Control No. 2900-0661.”

**FOR FURTHER INFORMATION CONTACT:** Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Avenue NW, Washington, DC 20420, (202) 266-4688 or email [maribel.aponte@va.gov](mailto:maribel.aponte@va.gov). Please refer to “OMB Control No. 2900-0661” in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Authority:* 44 U.S.C. 3501-3521.

*Title:* State Veterans Homes Construction & Acquisition Grant Program (SVHCGP), VA Forms 10-0388-1, 10-0388-2, 10-0388-3, 10-0388-4, 10-0388-5, 10-0388-6, 10-0388-7, 10-0388-8, 10-0388-9, 10-0388-10, 10-0388-12, 10-0388-13.

*OMB Control Number:* 2900-0661.

*Type of Review:* Reinstatement of a previously approved collection.

*Abstract:* 38 U.S.C. 8133(a) and 8135(a) authorize and appropriate expenditure of funds for State Home Domiciliary, Nursing Home, and Hospital Care. These portions of the U.S.C. require, among other things, that the State applicant provide the Department of Veterans Affairs (VA) with an application. Only State governments and recognized federal tribes (their governments) will submit the information to complete an application for the State Veterans Homes Construction Grant Program (SVHCGP); private groups or citizens are not eligible. Applicants will complete VA Forms 10-0388-1, 10-0388-2, 10-0388-3, 10-0388-4, 10-0388-5, 10-0388-6, 10-0388-7, 10-0388-8, 10-0388-9, 10-0388-10, 10-0388-12, and 10-0388-13 to apply for the SVHCGP and to certify compliance with VA requirements. VA uses this information, along with other documents submitted to evaluate the feasibility of the projects

for VA participation, to determine eligibility for a grant awards.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection

of information was published at 88 FR 39 on February 28, 2023, page 12721.

*Affected Public:* State, local, or Tribal governments.

*Estimated Annual Burden:* 1,200 hours.

*Estimated Average Burden per Respondent:* 24 hours.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 50.

By direction of the Secretary.

**Maribel Aponte,**

*VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.*

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