

Appropriations Limit Analysis

**b. Letter from San Bernardino Valley
Municipal Water District Legal Counsel
dated April 6, 2015**

Attachment 2b

April 6, 2015

VIA ELECTRONIC AND U.S. MAIL: kmcdonald@lafco.sbcounty.gov

Kathleen Rollings-McDonald
Executive Officer
Local Agency Formation Commission
for San Bernardino County
215 North "D" Street, Suite 204
San Bernardino, California 92415-9490

Re: Service Review for Water Conservation in the Valley Region

Dear Kathleen:

Our firm represents the San Bernardino Valley Municipal Water District ("Valley District"). By memorandum dated March 12, 2015, the Local Agency Formation Commission for San Bernardino County ("LAFCO") circulated a draft report on the proposed Service Review for Water Conservation in the Valley Region (the "Draft Report"). On page five of the Draft Report, LAFCO states, in relevant part, as follows:

This service review identifies areas where the districts fail to comply with the State Constitution, State Law, and generally accepted good-governance practices. LAFCO staff recommends that the Commission determine that the districts are not in compliance with the following and that LAFCO staff returns to the Commission every six months until all of the items below are satisfied.

Inland Empire Utilities Agency and San Bernardino Valley Municipal Water District

Section 1.5 of [Article XIII B of] the State Constitution reads that the annual calculation of the appropriations limit (Gann Limit) for each entity of local government shall be reviewed as part of an annual financial audit. A review of the audits for IEUA and MUNI [i.e., Valley District] does not identify the annual calculation of the limit. . . . LAFCO staff recommends that these agencies include this requirement in future audits.

Valley District believes that LAFCO staff have misunderstood Section 1.5 and so have mistakenly requested that Valley District include an independent assessment of whether or not Valley District complies with the Gann Limit in our annual audit. For the reasons described below, therefore, Valley District respectfully requests that the Commission not adopt the recommendation of LAFCO staff to require that our annual audit include a review of whether or not Valley District has complied with the Gann Limit.

Pursuant to Government Code section 7910(a), “[e]ach year the governing body of each local jurisdiction shall, by resolution, establish its appropriations limit and make other necessary determinations for the following fiscal year pursuant to Article XIII B of the California Constitution at a regularly scheduled meeting or noticed special meeting.” Attached hereto for your reference as Exhibits 1 and 2 are Valley District Resolution Numbers 1007 and 1018, which established Valley District’s appropriations limits for FY 2013/14 and 2014/15, respectively.

Section 1.5 of Article XIII B of the California Constitution further requires that “[t]he annual calculation of the appropriations limit under this article for each entity of local government shall be reviewed as part of an annual financial audit.” It is noteworthy that, in light of the requirement that virtually all public agencies have an independent audit performed each fiscal year, section 1.5 does *not* specify an “independent” audit by a certified public accountant. Indeed, the plain language of the section does not even indicate which agency or individual is required to conduct the audit. Our research indicates that there is no statute, regulation, California case, Attorney General Opinion or other binding legal authority that requires any specific agency to perform the review or even that specifies any process through which the review must be undertaken. Moreover, section 1.5 was added by Proposition 111 in 1990, which generally weakened the Gann Limit rather than bolstered its requirements. Thus, LAFCO staff’s recommendation in the Draft Report that Valley District include such a review in its annual audit is precisely that – a recommendation by LAFCO staff, without any legal support.

Valley District has contacted our accountants, as well as other public accountants, to determine whether annual audits for special districts typically include the type of provision that LAFCO staff recommends in the Draft Report. We have found no instance where our accountants, who serve a large number of special districts, or other public accountancy firms regularly include a provision to review an agency’s compliance with the Gann Limit in their annual audits. One accountant told us that, if requested, they could provide this service, but also indicated that it was not a normal part of the audits that it conducts for special districts.

Valley District believes that it is not surprising that public accountancy firms that audit special districts do not attempt to review compliance with the Gann Limits for those agencies. As noted above, California law requires the governing board of these agencies to formally adopt a Gann Limit each year. The California State Controller’s Office, which is responsible for providing statewide oversight for the operations of special districts, then requires each agency to report, under penalty of perjury, its compliance with the Gann Limit as part of its annual report. Attached hereto for your reference as Exhibit 3 is Valley District’s 2014 report to the State

Controller's Office. As you will see on page 6 of 9 in the PDF version, the State Controller's Office requires each special district to identify its Gann Limit (which was previously adopted by the agency's governing board) and then determine the total appropriations subject to the limit and whether the agency is in compliance with that limit. A copy of Valley District's working papers, which show how Valley District calculated the numbers that were reported to the State Controller's Office in 2014, are attached hereto as Exhibit 4.

In other words, California law does not support the position taken by LAFCO staff to the effect that a review of compliance with the Gann Limit must occur during the annual independent audit. Instead, the law simply requires that a public agency's compliance with the Gann Limit must be reviewed and then accomplished that purpose through the combination of requiring the agency's governing board to establish the appropriation limit in public and review by the California State Controller's Office as part of the agency's annual reporting. The actual practice of public accountants is consistent with this understanding of the law, not with the recommendation of LAFCO staff.

For these reasons, Valley District respectfully requests that the Commission not adopt the recommendation of LAFCO staff to require that our annual audit include a review of whether or not Valley District has complied with the Gann Limit. Valley District's Comptroller, Cindy Saks, is planning to attend the LAFCO meeting on April 15 and will be available to answer questions at that time.

Very truly yours,

DOWNEY BRAND LLP



David R.E. Aladjem

cc: Doug Headrick
Cindy Saks

Enclosures

- Exhibit 1: Resolution No. 1007 (Establishing Appropriations Limit for FY 2013/14)
- Exhibit 2: Resolution No. 1018 (Establishing Appropriations Limit for FY 2014/15)
- Exhibit 3: 2014 Report to State Controller's Office
- Exhibit 4: Working Papers for Calculation of 2013/14 Appropriations Limit

Exhibit 1

RESOLUTION NO. 1007

**RESOLUTION OF THE BOARD OF DIRECTORS OF
THE SAN BERNARDINO VALLEY MUNICIPAL WATER
DISTRICT ESTABLISHING THE APPROPRIATIONS
SUBJECT TO LIMIT FOR FISCAL YEARS 2013-2014**

BE IT HEREBY RESOLVED that, in accordance with Article XIII B of the California State Constitution, the Board of Directors of the San Bernardino Valley Municipal Water District hereby establishes \$24,172,145 as the appropriations subject to limit for Fiscal Year 2013-2014.

ADOPTED this 21st day of May, 2013.

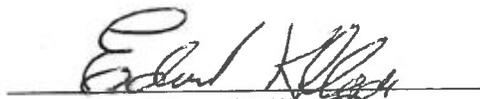
San Bernardino Valley Municipal Water
District

By:



C. Patrick Milligan
President

ATTEST:



Edward Killgore
Secretary

Exhibit 2

RESOLUTION NO. 1018

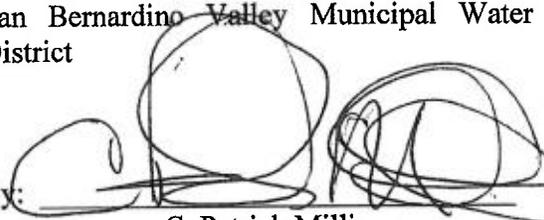
**RESOLUTION OF THE BOARD OF DIRECTORS OF
THE SAN BERNARDINO VALLEY MUNICIPAL WATER
DISTRICT ESTABLISHING THE APPROPRIATIONS
SUBJECT TO LIMIT FOR FISCAL YEARS 2014-2015**

BE IT HEREBY RESOLVED that, in accordance with Article XIII B of the California State Constitution, the Board of Directors of the San Bernardino Valley Municipal Water District hereby establishes \$24,215,427 as the appropriations subject to limit for Fiscal Year 2014-2015.

ADOPTED this 3rd day of June, 2014.

San Bernardino Valley Municipal Water
District

By:



C. Patrick Milligan
President

ATTEST:



Edward Killgore
Secretary

Exhibit 3

**San Bernardino Valley Municipal Water District
Special Districts Financial Transactions Report**

General Information

Fiscal Year

Mailing Address

Street 1 Is Address Changed?
 Street 2
 City State Zip
 Email

Members of the Governing Body

	First Name	Middle Initial	Last Name	Title
Member	<input type="text" value="C."/>	<input type="text" value="P"/>	<input type="text" value="Milligan"/>	<input type="text" value="President"/>
Member	<input type="text" value="Mark"/>	<input type="text"/>	<input type="text" value="Bulot"/>	<input type="text" value="Vice President"/>
Member	<input type="text" value="Steve"/>	<input type="text"/>	<input type="text" value="Copelan"/>	<input type="text" value="Treasurer"/>
Member	<input type="text" value="Edward"/>	<input type="text"/>	<input type="text" value="Killgore"/>	<input type="text" value="Secretary"/>
Member	<input type="text" value="Gil"/>	<input type="text"/>	<input type="text" value="Navarro"/>	<input type="text" value="Director"/>
Member	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Member	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Member	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Member	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Other Officials

	First Name	Middle Initial	Last Name	Title
	<input type="text" value="Douglas"/>	<input type="text"/>	<input type="text" value="Headrick"/>	<input type="text" value="Manager"/>
	<input type="text" value="Cynthia"/>	<input type="text"/>	<input type="text" value="Saks"/>	<input type="text" value="Fiscal Officer"/>
	<input type="text" value="Bruce"/>	<input type="text"/>	<input type="text" value="Varner"/>	<input type="text" value="Attorney"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Report Prepared By

First Name	Middle Initial	Last Name	Phone No
<input type="text" value="Cynthia"/>	<input type="text"/>	<input type="text" value="Saks"/>	<input type="text" value="(909) 387-9224"/>

Independent Auditor

First Name	Middle Initial	Last Name	Phone No
<input type="text" value="Scott"/>	<input type="text"/>	<input type="text" value="Manno"/>	<input type="text" value="(909) 889-0871"/>

San Bernardino Valley Municipal Water District

Special Districts Financial Transactions Report

Detailed Summary of Footnotes For Fiscal Year **2013-14**

Forms	Column	Additional Details	Footnotes
Water Revenues, Expenses and Changes in Fund Equity			
Sales for Resale	A		Due to the Drought in California and low allocation from the State Water Project, water has not been available for resale.
Water Purchases	A		Due to the Drought in California and low allocation from the State Project, water has not been available to purchase and resale accordingly
Interest Income	A		The District has hired and financial advisor which has helped the District increase interest earnings.
Prior Period Adjustments	A		Due to changes in Governmental Accounting Standards, the District was required to write the outstanding balance of the Cost of Issuance for the 2011 COP's

**San Bernardino Valley Municipal Water District
Special Districts Financial Transactions Report - Water Enterprise**

Revenues, Expenses and Changes in Fund Equity

Fiscal Year 2014

Operating Revenues

Water Sales

Residential	
Business	
Industrial	
Irrigation	
Sales for Resale	3,650,841
Interdepartmental	
All Other Sales	

Water Services

Fire Prevention	
Ground Water Replenishment	
Standby or Availability Charges	
Service Type Assessments	
All Other	
Total Operating Revenues	\$3,650,841

Operating Expenses

Source of Supply

Water Purchases	3,307,191
Ground Water Replenishment	
Other	15,800,305

Other Operating Expenses

Pumping	
Water Treatment	
Administration and General	13,158,826
Customer Accounts	
Transmission and Distribution	
Depreciation and Amortization	11,240,524
Other	
Total Operating Expenses	\$43,506,846

Operating Income (Loss)

(\$39,856,005)

Non-Operating Revenues

Interest Income	2,172,030
Rents, Leases and Franchises	
Taxes and Assessments	
Current Secured and UnSecured (1%)	7,184,192
Voter Approved Taxes	45,595,207
Property Assessments	

**San Bernardino Valley Municipal Water District
Special Districts Financial Transactions Report - Water Enterprise**

Revenues, Expenses and Changes in Fund Equity

Fiscal Year 2014

Special Assessments	
Prior Year Taxes and Assessments	391,063
Penalties and Cost on Delinquent Taxes and Assessments	
Federal	
Aid for Construction	
Other Federal	
State	
Aid for Construction	
State Water Project	
Homeowners Property Tax Relief	782,965
Timber Yield	
State Other and In-Lieu Taxes	
Other Governmental Agencies	
Redevelopment Pass-Through	22,690,528
Other	
Other Non-Operating Revenues	5,494,730
Total Non-Operating Revenues	\$84,310,715
Non-Operating Expenses	
Interest on Long-Term Debt	331,284
Other Interest	
Other Non-Operating Expenses	
Total Non-Operating Expenses	\$331,284
Non-Operating Income (Loss)	\$83,979,431
Income (Loss) Before Operating Transfers	\$44,123,426
Operating Transfers In (Intra-District)	
Operating Transfers Out (Intra-District)	
Net Income (Loss)	\$44,123,426
Fund Equity, Beginning of Period	\$564,951,311
Contributed Capital	
Federal	
State	
Other Governmental Agencies	3,685,598
Non-Governmental Agencies	
Prior Period Adjustments	-164,733
Residual Equity Transfers	
Other	
Fund Equity, End of Period	\$612,595,602

**San Bernardino Valley Municipal Water District
Special Districts Financial Transactions Report
Consolidation of Fund Equities and Transfers**

Consolidation of Fund Equities and Transfers

Fiscal Year **2014**

	General and Special Revenue Funds	Debt Service Funds	Capital Projects Funds	Enterprise Funds
Consolidation of Fund Equities				
Non-Enterprise Activities	\$0	\$0	\$0	
Enterprise Fund Equities				
Airport				\$0
Electric				\$0
Harbor and Port				\$0
Hospital				\$0
Waste Disposal				\$0
Water				\$612,595,602
Total Ending Fund Equities	\$0	\$0	\$0	\$612,595,602

	Transfers In A	Transfers Out B	Net C
Consolidation of Transfers In and Transfer Out			
General and Special Revenue Funds	\$0	\$0	
Debt Service Funds	\$0	\$0	
Capital Projects Funds	\$0	\$0	
Enterprise Activities			
Airport	\$0	\$0	
Electric	\$0	\$0	
Harbor and Port	\$0	\$0	
Waste Disposal	\$0	\$0	
Water	\$0	\$0	
Total	\$0	\$0	\$0

**San Bernardino Valley Municipal Water District
Special Districts Financial Transactions Report
Appropriations Limit Information**

Appropriations Limit Information

Fiscal Year 2014

Appropriations Limit	24,172,145
Total Annual Appropriations Subject to the Limit	16,765,915
Revenues received (Exceed) Under Appropriation Limit	\$7,406,230

**San Bernardino Valley Municipal Water District
Special Districts Financial Transactions Report - Long-Term Debt**

General Obligation Bonds, Revenue Bonds, Certificates of Participation and Other

Fiscal Year **2014**

District-wide or Improvement District/Zone	District-wide
Improvement/Zone (If Applicable)	
Type of Debt	Certificates of Participation
Activity	Water Enterprise
Purpose of Issue	Baseline Feeder Well Replace
Nature of Revenue Pledged	Baseline Feeder Retail Agency
Percent of Pledge	100.00
Year of Authorization	2011
Principal Amount Authorized	8,565,000
Principal Amount Issued	8,565,000
Beginning Maturity Date	2013
Ending Maturity Date	2042
Principal Amount Unmatured, Beginning of Fiscal Year	\$8,405,000
Adjustments - Increase (Decrease)	
Principal Amount Issued During Fiscal Year	
Principal Amount Matured During Fiscal Year	165,000
Principal Amount Defeased During Fiscal Year	
Principal Amount Unmatured, End of Fiscal Year	\$8,240,000
Principal Amount in Default, End of Fiscal Year	
Interest in Default, End of Fiscal Year	
Amount Held in Bond Reserve	

**San Bernardino Valley Municipal Water District
Special Districts Financial Transactions Report - Consolidated Balance Sheet**

Fiscal Year 2014

Assets

	General and Special Revenue Funds	Debt Service Funds	Capital Projects Funds	Enterprise Funds	General Fixed Assets	General Long-Term Debt	Total Memorandum Only
Assets							
Cash and Cash Equivalents				38,957,218			\$38,957,218
Taxes Receivable				161,659			\$161,659
Interest Receivable				155,685			\$155,685
Accounts Receivable				1,643,192			\$1,643,192
Loans, Notes, and Contracts Receivable				5,202,746			\$5,202,746
Due from Other Funds							\$0
Inventory of Materials and Supplies							\$0
Other Current Assets				1,975			\$1,975
Lease Payments Receivable							
Unearned Finance Charges							
Investments				84,717,982			\$84,717,982
Restricted Assets				172,708,492			\$172,708,492
Deferred Charges							
Unamortized Discount on Long-Term Debt							
Other Assets				238,500			\$238,500
Fixed Assets							
Land				12,686,129			\$12,686,129
Buildings and Improvements				6,232,110			\$6,232,110
Equipment				459,822,908			\$459,822,908
Construction in Progress				1,874,334			\$1,874,334
Total Fixed Assets				\$480,615,481	\$0		\$480,615,481
Accumulated Depreciation				153,430,146			\$153,430,146
Net Fixed Assets				\$327,185,335	\$0		\$327,185,335
Other Debits							
Amount Available in Debt Service Funds							
Amount to be Provided							
Total Assets	\$0	\$0	\$0	\$630,972,784	\$0	\$0	\$630,972,784

**San Bernardino Valley Municipal Water District
Special Districts Financial Transactions Report - Consolidated Balance Sheet**

Fiscal Year 2014

Liabilities and Equity

	General and Special Revenue Funds	Debt Service Funds	Capital Projects Funds	Enterprise Funds	General Fixed Assets	General Long-Term Debt	Total Memorandum Only
Liabilities and Equity							
Accounts/Warrants Payable				2,714,676			\$2,714,676
Loans and Notes Payable							\$0
Interest Payable - Matured/Accrued				168,222			\$168,222
Other Current Liabilities				1,428,509			\$1,428,509
Compensated Absences Payable				270,826			\$270,826
Due to Other Governments							\$0
Due to Other Funds							\$0
Long-Term Debt							
General Obligation Bonds							\$0
Revenue Bonds							\$0
Certificates of Participation				8,240,000			\$8,240,000
Special Assessment							\$0
Federal							\$0
State							\$0
Time Warrants							\$0
Other Long-Term Indebtedness							\$0
Unamortized Premium on Long-Term Debt							\$0
Advances for Construction							\$0
Deferred Revenue				5,415,624			\$5,415,624
All Other Non-Current Liabilities				139,325			\$139,325
Total Liabilities	\$0	\$0	\$0	\$18,377,182		\$0	\$18,377,182
Fund Equity							
Contributed Capital							
Invested in General Fixed Assets							
Retained Earnings							
Reserved							
Unreserved				171,810,375			\$171,810,375
Fund Balances							
Reserved				440,785,227			\$440,785,227
Unreserved Designated							\$0
Unreserved Undesignated							\$0
Total Fund Equity	\$0	\$0	\$0	\$612,595,602			\$612,595,602
Total Liabilities and Fund Equity	\$0	\$0	\$0	\$630,972,784		\$0	\$630,972,784

Exhibit 4



**SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
 APPROPRIATIONS LIMIT
 2013 ~ 2014 FISCAL YEAR**

2012 - 2013 APPROPRIATIONS LIMIT			22,801,002
	<u>Percent</u>	<u>Ratio</u>	
2013 - 2014 ADJUSTMENT FOR PERCENTAGE CHANGES IN:			
CALIFORNIA PER CAPITA PERSONAL INCOME	5.12	1.0512	
POPULATION PERCENT CHANGE 2012 TO 2013	0.85	1.0085	
PERCENT CHANGE AS A FACTOR			<u>106.0135%</u>
2013 - 2014 APPROPRIATIONS LIMIT			<u><u>24,172,145</u></u>



May 2013

Dear Fiscal Officer:

Subject: Price and Population Information

Appropriations Limit

The California Revenue and Taxation Code, section 2227, mandates the Department of Finance to transmit an estimate of the percentage change in population to local governments. Each local jurisdiction must use their percentage change in population factor for January 1, 2013, in conjunction with a change in the cost of living, or price factor, to calculate their appropriations limit for fiscal year 2013-14. Attachment A provides the change in California's per capita personal income and an example for utilizing the price factor and population percentage change factor to calculate the 2013-14 appropriations limit. Attachment B provides city and unincorporated county population percentage change. Attachment C provides population percentage change for counties and their summed incorporated areas. The population percentage change data excludes federal and state institutionalized populations and military populations.

Population Percent Change for Special Districts

Some special districts must establish an annual appropriations limit. Consult the Revenue and Taxation Code section 2228 for further information regarding the appropriations limit. Article XIII B, section 9(C), of the State Constitution exempts certain special districts from the appropriations limit calculation mandate. The Code and the California Constitution can be accessed at the following website:
<http://leginfo.legislature.ca.gov/faces/codes.xhtml>.

Special districts required by law to calculate their appropriations limit must present the calculation as part of their annual audit. Any questions special districts have on this issue should be referred to their respective county for clarification, or to their legal representation, or to the law itself. No state agency reviews the local appropriations limits.

Population Certification

The population certification program applies only to cities and counties. Revenue and Taxation Code section 11005.6 mandates Finance to automatically certify any population estimate that exceeds the current certified population with the State Controller's Office. **Finance will certify the higher estimate to the State Controller by June 1, 2013.**

Please Note: Prior year's city population estimates may be revised.

If you have any questions regarding this data, please contact the Demographic Research Unit at (916) 323-4086.

ANA J. MATOSANTOS
Director
By:

MICHAEL COHEN
Chief Deputy Director

Attachment

- A. **Price Factor:** Article XIII B specifies that local jurisdictions select their cost of living factor to compute their appropriation limit by a vote of their governing body. The cost of living factor provided here is per capita personal income. If the percentage change in per capita personal income is selected, the percentage change to be used in setting the fiscal year 2013-14 appropriation limit is:

Per Capita Personal Income

Fiscal Year (FY)	Percentage change over prior year
2013-14	5.12

- B. Following is an example using sample population change and the change in California per capita personal income as growth factors in computing a 2013-14 appropriation limit.

2013-14:

Per Capita Cost of Living Change = 5.12 percent
 Population Change = 0.79 percent

Per Capita Cost of Living converted to a ratio: $\frac{5.12 + 100}{100} = 1.0512$

Population converted to a ratio: $\frac{0.79 + 100}{100} = 1.0079$

Calculation of factor for FY 2013-14: $1.0512 \times 1.0079 = 1.0595$

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2012 to January 1, 2013 and Total Population, January 1, 2013

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2012-2013	1-1-12	1-1-13	1-1-2013
San Bernardino				
Adelanto	0.97	30,989	31,289	31,289
Apple Valley	0.78	69,888	70,436	70,436
Barstow	0.85	22,582	22,773	23,168
Blg Bear Lake	0.65	5,078	5,111	5,111
Chino	1.78	71,999	73,277	79,873
Chino Hills	0.71	75,497	76,033	76,033
Colton	0.71	52,581	52,956	52,956
Fontana	0.75	199,482	200,974	200,974
Grand Terrace	1.15	12,131	12,270	12,270
Hesperia	0.61	90,844	91,400	91,400
Highland	0.70	53,553	53,926	53,926
Loma Linda	0.59	23,278	23,416	23,476
Montclair	0.61	37,086	37,311	37,311
Needles	0.57	4,884	4,912	4,912
Ontario	0.65	165,790	166,866	166,866
Rancho Cucamonga	1.13	169,152	171,058	171,058
Redlands	0.66	69,358	69,813	69,813
Rialto	0.87	100,397	101,275	101,275
San Bernardino	0.71	209,567	211,056	212,639
TwentyNine Palms	2.46	16,930	17,347	26,084
Upland	0.66	74,414	74,907	74,907
Victorville	1.62	113,461	115,296	120,368
Yucaipa	1.07	51,992	52,549	52,549
Yucca Valley	0.75	20,873	21,030	21,030
Unincorporated	0.65	285,479	287,336	296,550
<u>County Total</u>	<u>0.85</u>	<u>2,027,285</u>	<u>2,044,617</u>	<u>2,076,274</u>

*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.