



*The State Bar of California*

# Bank Reportable Action/Client Trust Account Pilot Program Analysis

**George Cardona, Chief Trial Counsel**

**Ron Pi, Program Manager, Mission Advancement & Accountability Division**

**Kevin Thomte, Program Analyst, Mission Advancement & Accountability Division**

Board of Trustees, July 20–21, 2023

# State Auditor Recommendations:

## *De Minimis* BRA Closures

- April 2022 State Auditor Report 2022-030
  - Several recommendations regarding handling of bank reportable actions (BRAs) and client-trust account related (CTA) cases
- *De Minimis* Closures of BRAs
  - (1) “Discontinue its use of informal guidance for review of bank reportable actions and direct all staff to follow the policies established in its intake procedures manual (intake manual)”
    - Done April 6, 2022
  - (2) “Revise its intake manual to disallow *de minimis* closures if the attorney has a pending or prior bank reportable action or case alleging a client trust account violation”
    - Done July 7, 2022
    - Disallow *de minimis* closure of a BRA for insufficient funds activity less than \$50 if the respondent has either (a) a pending BRA or CTA-related complaint; or (b) a closed BRA (other than a closure based on bank error) or a closed CTA-related complaint within the last two years
  - (3) “Establish a monitoring system to ensure staff are following its policies for de minimis closures.”
    - Pending completion of pilot project



# State Auditor Recommendations: Pilot Project for BRA/CTA Investigations

- April 2022 State Auditor Report 2022-030
  - “When investigating client trust account-related cases and bank reportable actions not closed de minimis, require its staff to obtain both the bank statements and the attorney’s contemporaneous reconciliations of the client trust account, and determine if the relevant transactions are appropriate.”
  - State Bar originally objects based on factors including resource needs for full implementation
- June 2, 2022: State Bar agrees to implement pilot project to better assess resource needs
- August 1, 2022: Pilot Project begins
  - Pilot team (12): SA, 3 attorneys, 4 investigators, 2 paralegals, 2 program specialists
  - OCTC given additional 12 FTE to support this pilot project



# Methodology:

## Pilot Program Case Assignment:

- Random assignment of cases started from Aug. 1, 2022, and as of Mar. 31, 2023, 645 cases were assigned to the pilot and nonpilot groups.

## Case Selection Criteria:

- BRAs and CTA cases that made it past intake stage.
- Approximately half of the eligible cases were randomly assigned into the pilot program, with the remaining cases assigned to various teams according to the normal procedures.
- For attorneys with multiple BRAs/CTA cases during the study period, their cases were assigned to the same group where their first case was randomly assigned.

## Three Areas of Analytical Focus:

- Trend Before and After Program: Dataset pulls BRAs/CTA cases from 2019-2022. The cases are used to understand the trend of case processing time and proportion of cases forwarded to investigation.
- Program Impact Analysis: Dataset pulls case information on program BRAs/CTA cases (both pilot and nonpilot) to examine case outcomes and case processing time.
- Workload Analysis: Dataset pulls attorney/investigator workload data for comparisons between pilot and nonpilot staff.



# Methodology:

## Analysis:

1. Understanding of prior BRAs/CTA cases, based on selected case outcome metrics:
  - Time spent in intake pre-pilot/pilot
  - Rate of cases moving beyond intake
2. Case-level analysis of pilot program vs nonpilot BRAs/CTA cases:
  - Proportion of pilot/nonpilot cases and case type
  - Investigation outcomes
3. Staff workload between pilot/nonpilot staff

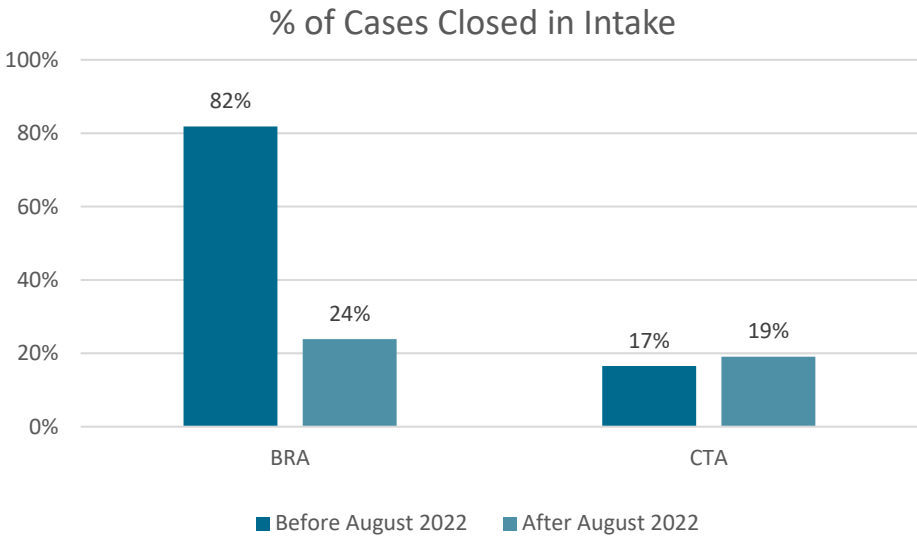
## Key Findings:

- Overall increase in BRAs moving beyond intake from August 2022.
- Pilot program BRAs/CTA cases resulted in more warning letters being issued, as well as more cases being forwarded to charging.
- No significant difference in investigator workloads between pilot and nonpilot groups.



# Proportion of Cases Closed in Intake

- From August 2022 when the pilot program started, the overall proportion of BRAs closed in intake dropped significantly, from 82% before to 24% after.
- The same metric for CTA cases remains largely the same: 17% before and 19% after.



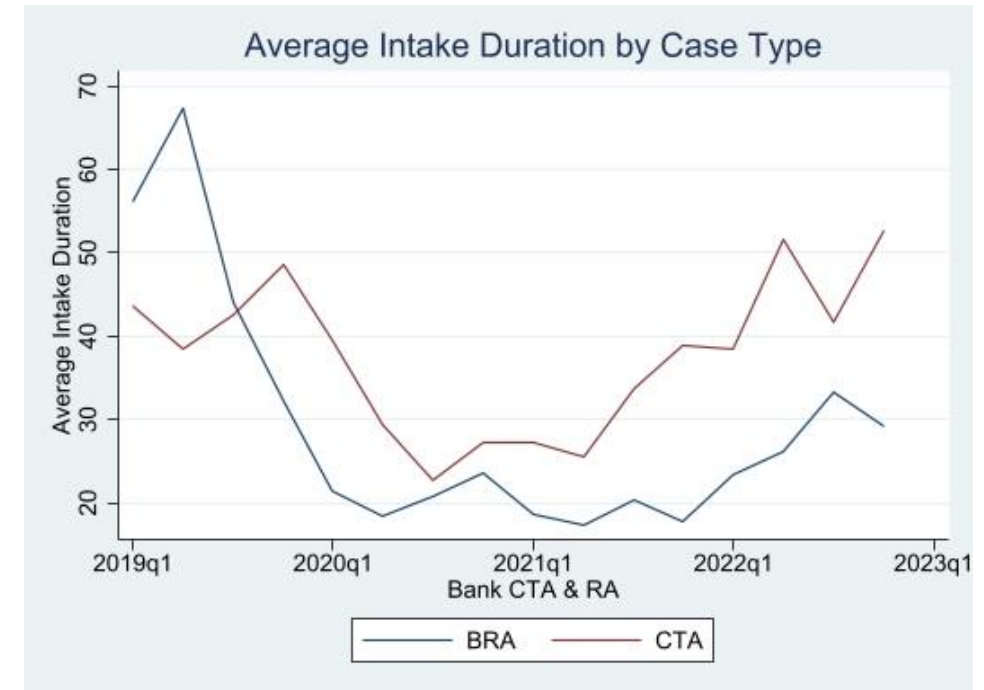
	BRA			CTA		
	Closed or Forwarded Past Intake	Closed in Intake	% Closed in Intake	Closed or Forwarded Past Intake	Closed in Intake	% Closed in Intake
Before August 2022	4,897	4,008	82%	4,114	680	17%
After August 2022	549	131	24%	545	104	19%

Data appears consistent with change in policy to limit *de minimis* closures of BRAs in intake



# Time Spent in Intake

- Based on trend data from 2019, the average case time in intake reached the lowest point in mid-2020, at around 20 days for BRAs and 25 days for CTA cases.
- The trendline started to move upward from mid-2021. The upward trend in case time in intake appears to be partly correlated with increases in new complaints.
- There is no evidence that the pilot program has affected the case time in intake.



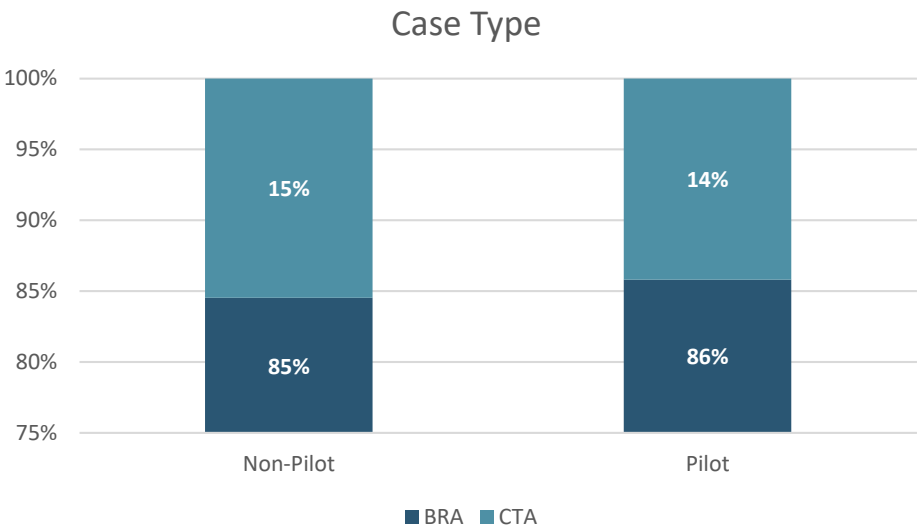
\*Complaints Date Range: 2019–2022



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# Case Type Composition

- Since random assignment began in August 2022, BRAs and CTA cases as a proportion of the total have remained consistently at 85 and 15%, respectively, in both the pilot and nonpilot groups.



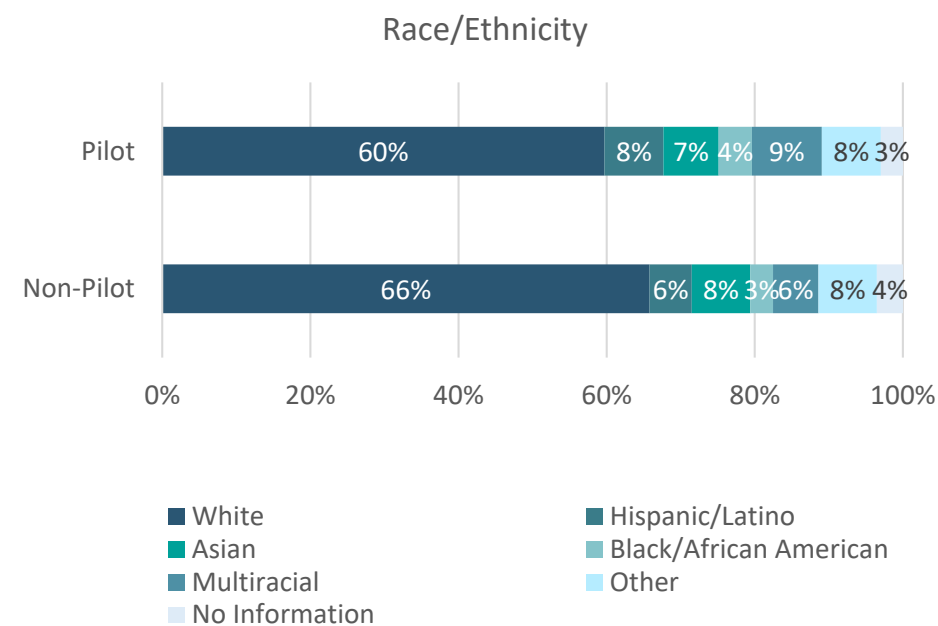
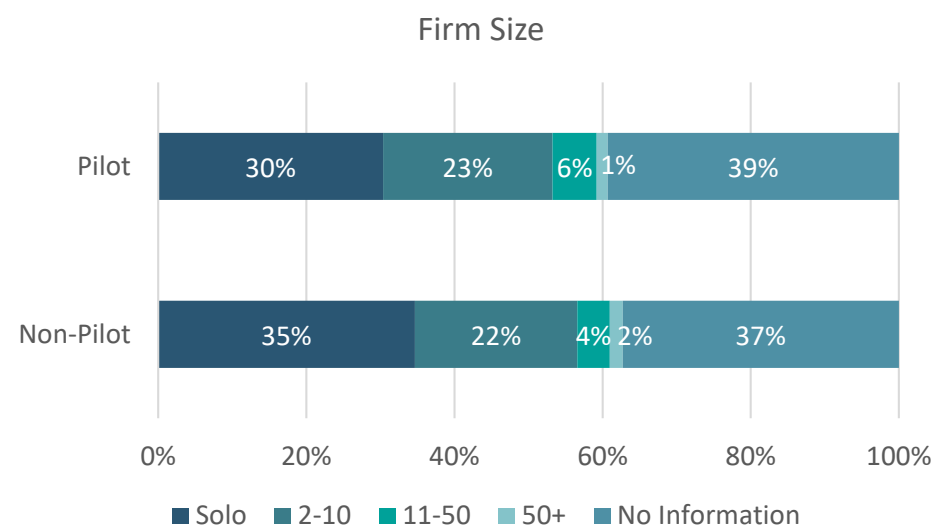
Case Type	Non-Pilot	Pilot
CTA	53	39
BRA	270	238
Total	349	296





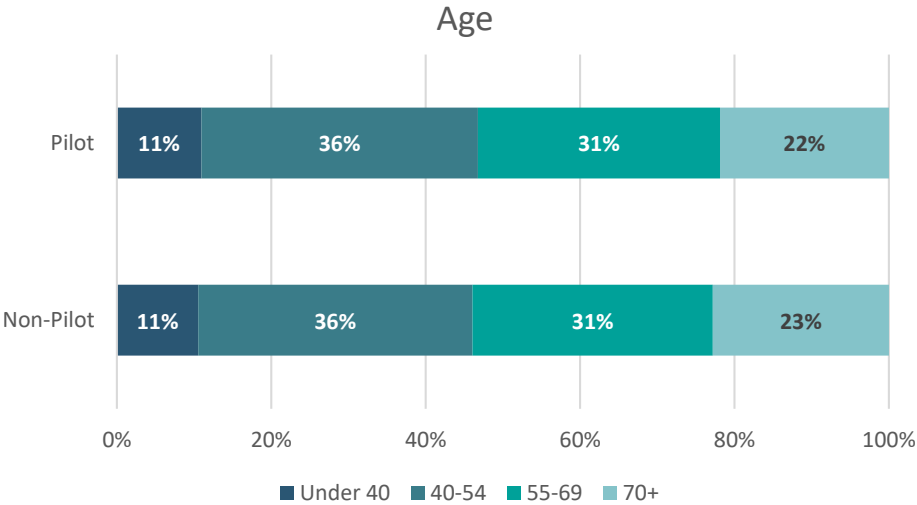
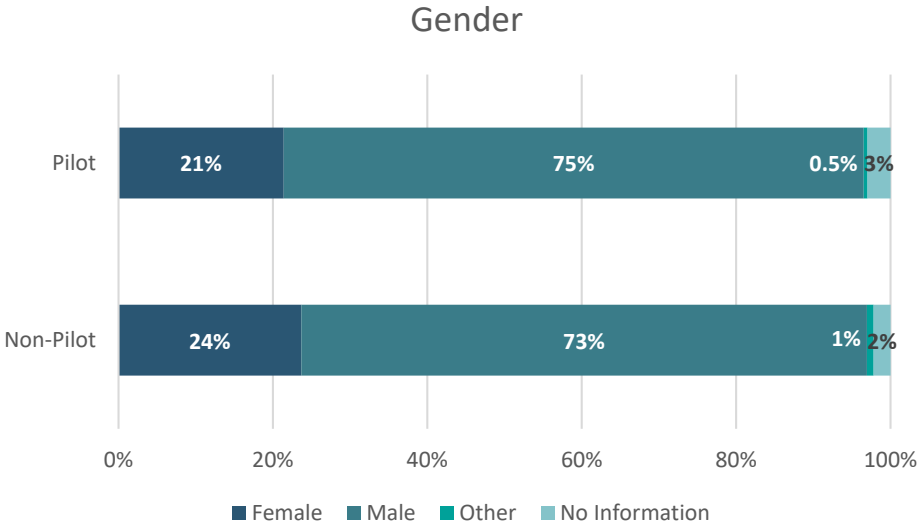
# Firm Size and Race/Ethnicity

- The distribution of respondents showed no significant difference between pilot/nonpilot groups based on firm size or race/ethnicity.



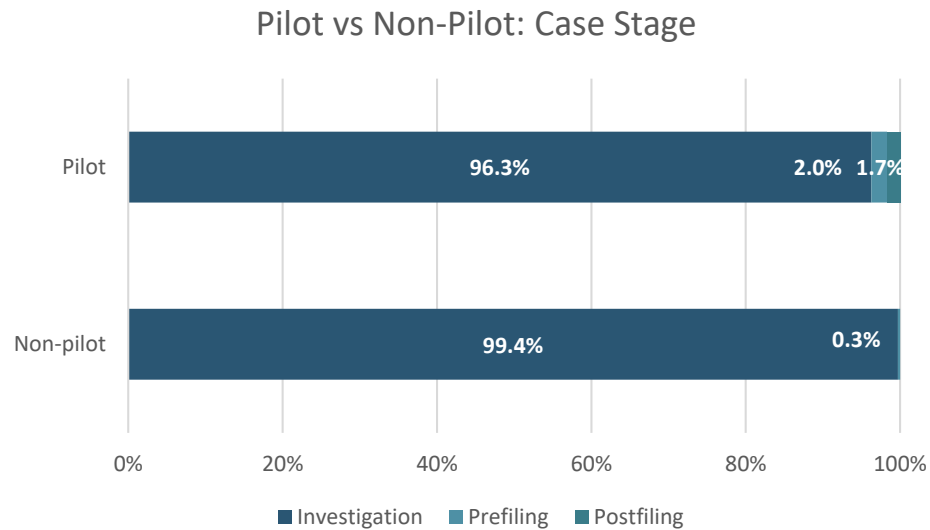
# Gender and Age

- The distribution of respondents showed no significant difference between pilot/nonpilot groups based on gender or age.



# Case Stages: Pilot vs Nonpilot

- Based on case assignment protocol, all cases are assigned to either the pilot or nonpilot group only after they have been forwarded to investigation.
- Looking at the current case status as of the end of April 2023, about 4% (11) of pilot cases have been forwarded to charging, with about half of these (5) currently in post-filing.
- In contrast, less than one-half of one percent (1) of nonpilot cases has moved beyond investigation.

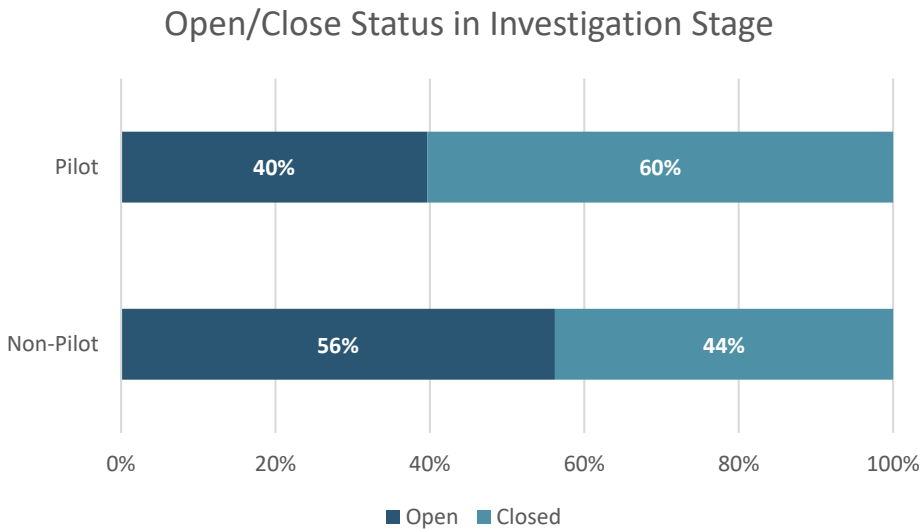


Program	Investigation	Prefiling	Postfiling	Total
Non-pilot	347	1	0	349
Pilot	285	6	5	296



# Open/Close Status in Investigation

- For cases either closed in investigation or currently still open in investigation as of April 2023, a comparison between pilot and nonpilot cases shows a higher proportion of pilot cases (60%) have been closed as compared to nonpilot cases (44%).
- The higher proportion of pilot cases completing the investigation stage within this time frame suggests that pilot cases are moving at a faster pace than those in the nonpilot group.

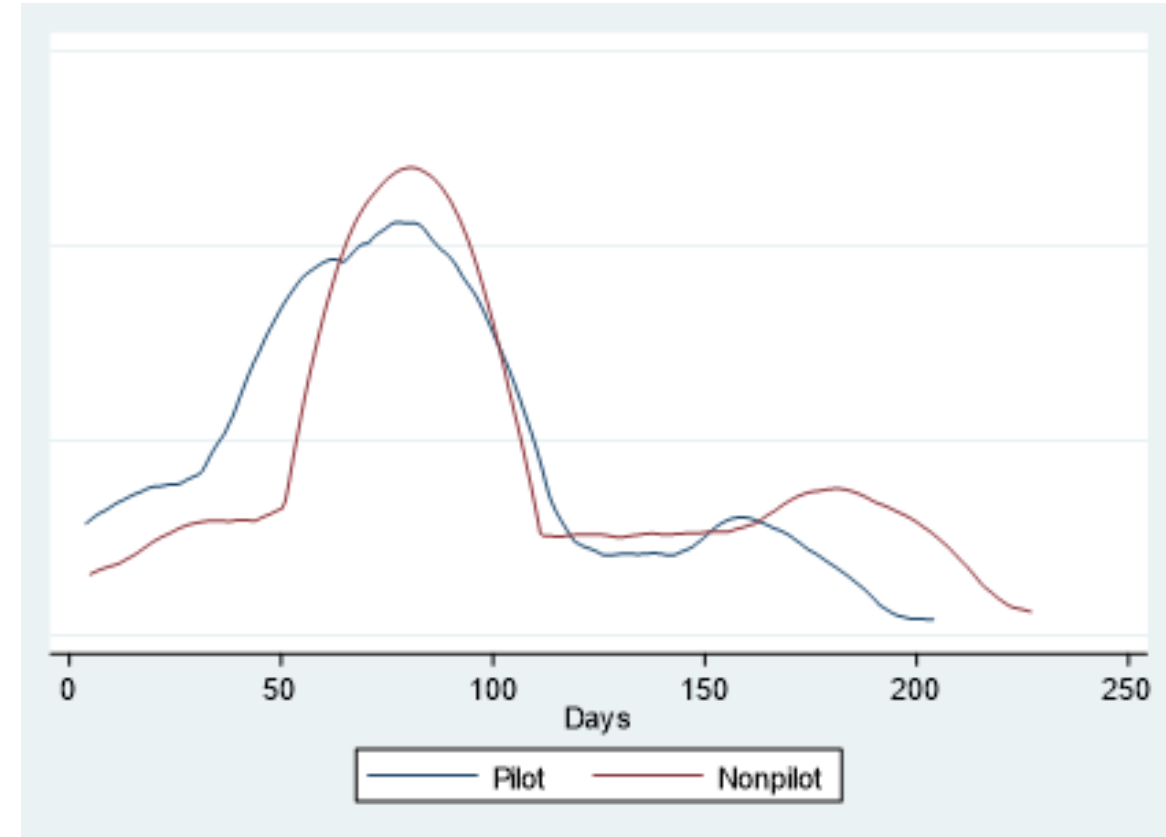


Program	Open	Closed	Total
Non-Pilot	195	152	347
Pilot	113	172	285



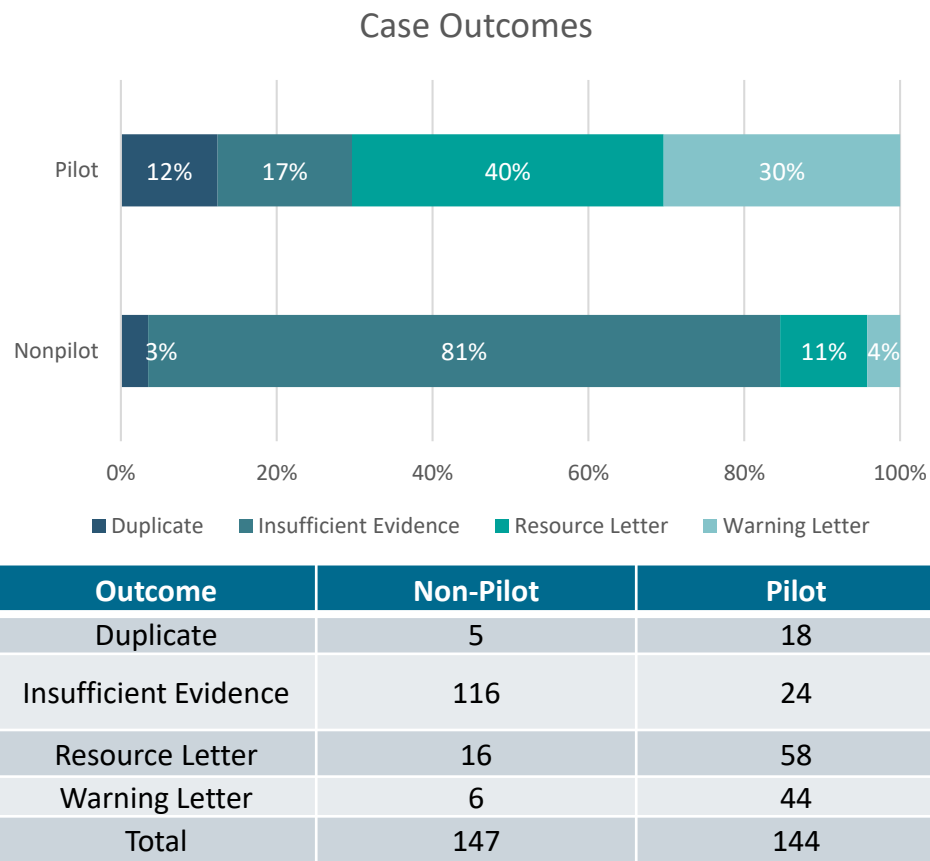
## Case Stage: Average Time in Investigation

- With a focus on cases closed in investigation, a pilot/nonpilot comparison confirms the faster speed of case closure in the pilot group.
- Of the 291 cases in both groups that have been closed in investigation, the average time in investigation is 80 days in the pilot group, compared to 100 days in the nonpilot group.
- The distribution of investigation time shows that the shorter time for pilot cases resulted from both ends of the distribution: more cases are closed sooner, and fewer cases are closed at the tail end of the distribution.



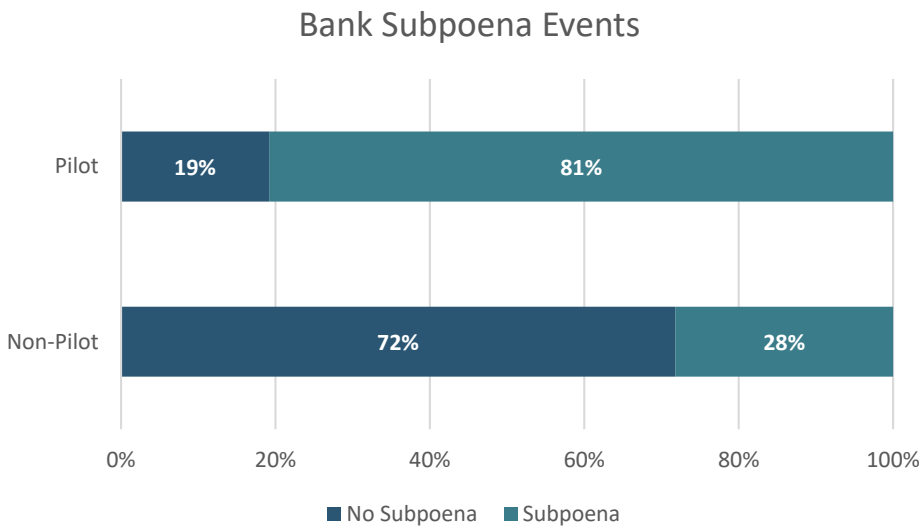
# Outcome of Cases Closed in Investigation

- Focused on cases that have been closed in investigation, the data shows significant differences between the groups in reasons for case closure:
  - 30% (44 cases) in the pilot group received warning letters, compared to 4% (6 cases) in the nonpilot group;
  - Only 17% (24 cases) of pilot cases were closed for insufficient evidence, compared to 81% (116 cases) in the nonpilot group.



# Case Event Analysis: Bank Subpoenas

- The higher proportions of pilot cases moved forward to charging or closed with warning letters may be the result of bank subpoenas being issued in more pilot group cases (81%) as compared to nonpilot cases (28%).



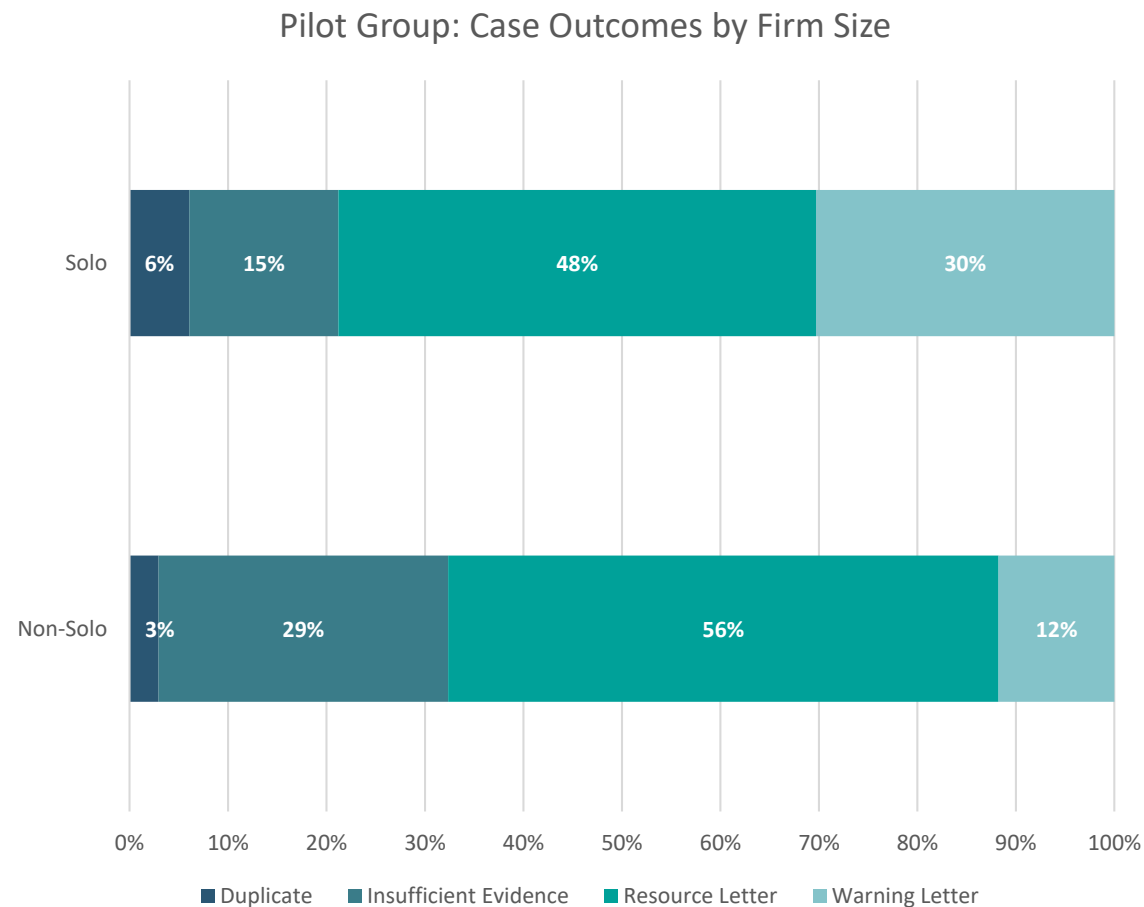
Program	Non-Pilot	Pilot
No Subpoena	178	38
Subpoena	70	160
Total	248	198

\* Case events pulled from Aug. 1, 2022 – Dec. 31, 2022



## Outcomes of Cases Closed in Investigation: By Firm Size in Pilot

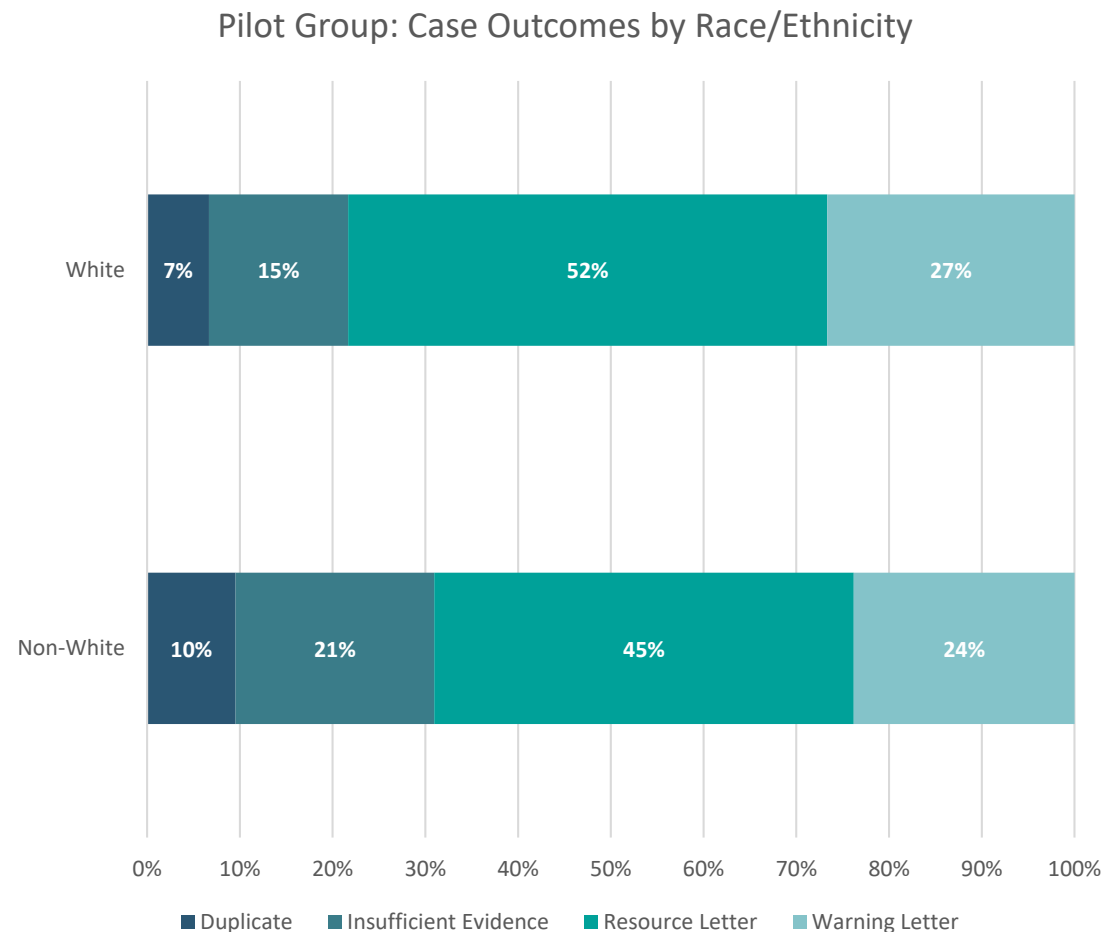
- Comparing solo and nonsolo respondents within the pilot group, the observed case outcomes show a large difference between them. However, the difference is not statistically significant due to small sample size (N: 106).
- We will revisit this figure in the future when more cases from the pilot program have been closed.





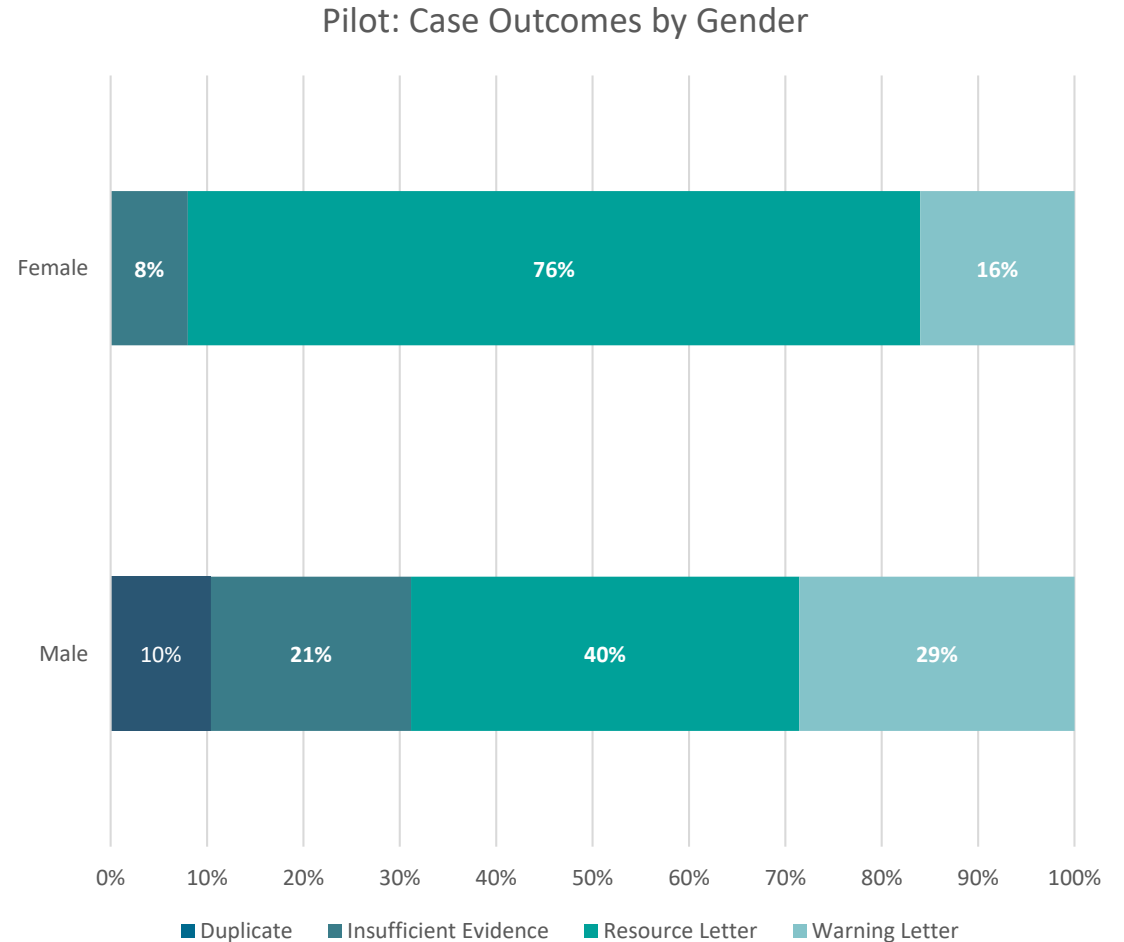
## Outcomes of Cases Closed in Investigation: By Race/Ethnicity in Pilot

- Comparing respondents by race and ethnicity within the pilot group, the observed case outcomes show a small difference between them. The small difference is statistically not significant due to small sample size (N: 102).
- We will revisit this figure in the future when more cases from the pilot program have been closed.



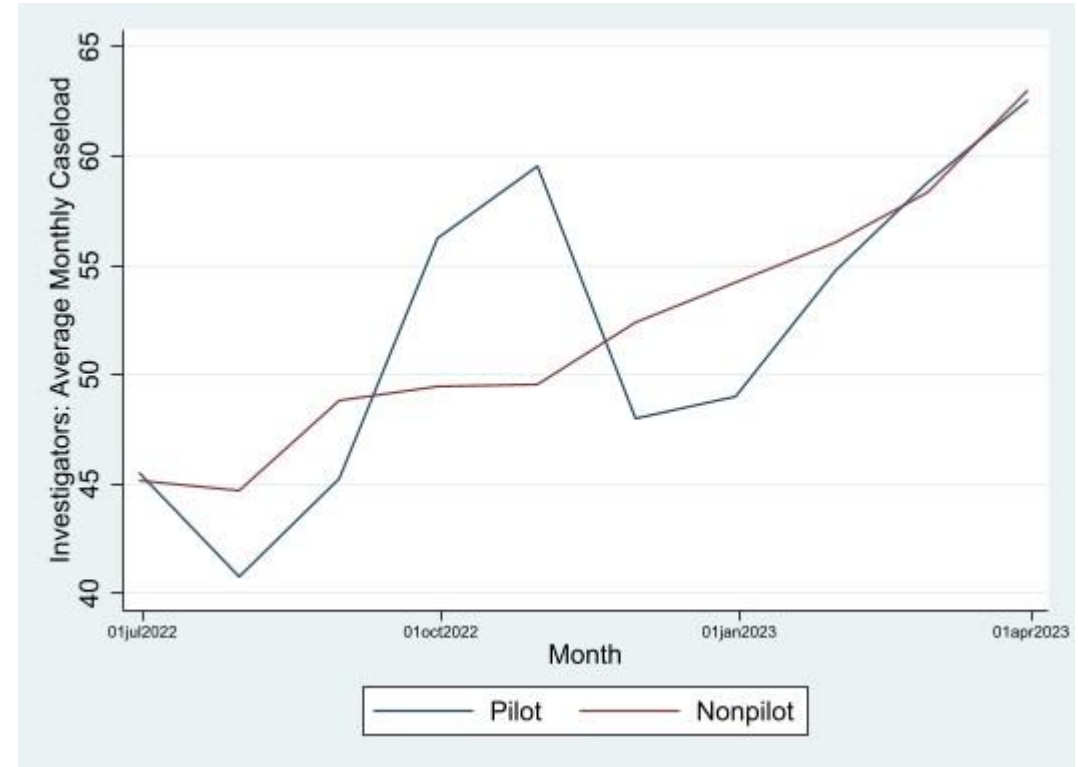
# Outcomes of Cases Closed in Investigation: By Gender in Pilot

- Comparing the respondents by gender within the pilot group, case outcome differences are large and statistically significant:
  - Male respondents had the highest rates of the lowest-level outcome, insufficient evidence at 21%, and highest-level outcome, warning letter at 29%.
  - Female respondents had significantly lower rates of both the lowest-level outcome, insufficient evidence at 8%, and highest-level outcome, warning letter at 16%.



# Investigation: Pilot/Non-Pilot Workload Comparison - Investigators

- Comparable workload between investigators within the pilot program compared to nonpilot.
- Average time to closure within investigation was faster within the pilot program group.
- Specialized team focused on these singular case types may be influencing the quicker turnaround time.



# Summary of Findings



## Case Flow Process:

- Proportion of BRAs moving beyond intake increased as pilot program was implemented;
- Proportion of CTA cases moving beyond intake remained unchanged.



## Program Impact:

- Pilot program affected case outcomes with more cases receiving warning letters and moving forward to charging;
- Case processing time in the pilot program is faster.



## Staff Workload:

- Comparison of staff workload between pilot and nonpilot groups suggests that the program impact did not result from workload differences.



## Permanent BRA/CTA Case Trial Team

- Based on preliminary analysis of pilot project, effective July 1, 2023, OCTC has implemented a permanent trail team dedicated to handling BRAs/CTA cases
- Will handle most BRAs/CTA cases post-intake using investigative methods recommended by the State Auditor
- New BRA/CTA team (17): SA, 4 attorneys, 7 investigators, 2 paralegals, 1 legal secretary, 2 program specialists

