



December 22, 2020

VIA EMAIL (senkouchi@capitol.hawaii.gov) **VIA EMAIL** (repsaiki@capitol.hawaii.gov)

The Honorable Ronald D. Kouchi
Senate President
415 South Beretania Street
Hawai'i State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki
Speaker, House of Representatives
415 South Beretania Street
Hawai'i State Capitol, Room 431
Honolulu, Hawai'i 96813

Re: 2020 Review of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts of the Department of Commerce and Consumer Affairs, Report No. 20-18

Dear President Kouchi and Speaker Saiki:

Please find attached a copy of Report No. 20-18, *2020 Review of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts of the Department of Commerce and Consumer Affairs*, along with a copy of the Auditor's Summary.

This report presents a five-year summary for each special fund, revolving fund, trust fund, and trust account maintained by the Department of Commerce and Consumer Affairs, evaluates the original intent and purpose of each fund and account, and determines the degree to which each fund and account achieves its stated and claimed purpose.

The report is accessible through the Office of the Auditor's website at:
<http://files.hawaii.gov/auditor/Reports/2020/20-18.pdf>.

The summary is also accessible through the Office of the Auditor's website at:
<http://files.hawaii.gov/auditor/Overviews/2020/20-18AuditorSummary.pdf>.

If you have any questions about the report, please contact me.

Very truly yours,

Leslie H. Kondo
State Auditor

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Attachments

cc/attach: Senators
Representatives
Carol Taniguchi, Senate Chief Clerk
Brian Takeshita, House Chief Clerk

Auditor's Summary

Review of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts of the Department of Commerce and Consumer Affairs

39 special funds, trust funds, and trust accounts were reviewed

Report No. 20-18

Four funds did not meet criteria

WE REVIEWED 39 FUNDS AND ACCOUNTS administered by the Department of Commerce and Consumer Affairs (DCCA) – specifically, 20 special funds, 12 trust funds, and 7 trust accounts. We found 2 special funds, 1 trust fund, and 1 trust account did not meet criteria. We recommended both special funds be closed, the trust fund be reclassified to a special fund, and the trust account be reclassified to a trust fund.

Section 23-12, Hawai'i Revised Statutes (HRS), requires the Auditor to review all existing special, revolving, and trust funds every five years. Reviews are scheduled so that each department's funds are reviewed once every five years. Although not mandated by statute, we included trust accounts as part of our review. This is our sixth review of DCCA's revolving funds, trust funds, and trust accounts, and our second review of DCCA's special funds.

We used criteria developed by the Legislature and by our office based on public finance and accounting literature. For each fund, we present a five-year financial summary, the purpose of the fund, and conclusions about its use. We did not audit the financial data, which is provided for informational purposes. We do not present conclusions about the effectiveness of programs or their management, or whether the programs should be continued.

Reporting shortfall

WE NOTED THAT DCCA did not file statutorily required reports for its funds and accounts totaling approximately \$2.1 million. Accurate and complete reporting will greatly improve the Legislature's oversight and control of these funds and provide increased budgetary flexibility.

Agency response

DCCA DISAGREED with our assessment that one trust fund should be reclassified to a special fund. We maintain that the fund does not meet the criteria of a trust fund because it functions as, and meets the criteria for, a special fund and should be reclassified.



FUND TYPES

SPECIAL FUNDS

are used to account for revenues earmarked for particular purposes and from which expenditures are made for those purposes.

REVOLVING FUNDS

such as loan funds, are often established with an appropriation of seed money from the general fund and must demonstrate the capacity to be self-sustaining.

TRUST FUNDS

such as a pension fund, invoke the State's fiduciary responsibility to care for and use the assets held to benefit those with a vested interest in the assets.

TRUST ACCOUNTS

are typically separate holding or clearing accounts and are often used as accounting devices for crediting or charging state agencies or projects for payroll and other costs.

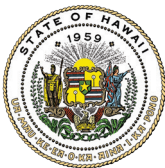
DCCA also disagreed with our conclusion that one special fund was inappropriately created because it was administratively established after Section 37-52.3, HRS, was amended to require all new special funds be established pursuant to an act of the Legislature. However, DCCA's response did not provide other information that would justify amending our conclusion.

Finally, as to our observations on DCCA's reporting of non-general funds, DCCA acknowledged one reporting oversight but disagreed with our conclusion that a trust fund was not properly reported. We maintain that the fund should have been included on DCCA's report to the Legislature of the department's administratively established accounts and funds based upon the information DCCA provided to us during the review process.

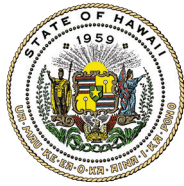
Review of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts of the Department of Commerce and Consumer Affairs

A Report to the Governor
and the Legislature of
the State of Hawai'i

Report No. 20-18
December 2020



OFFICE OF THE AUDITOR
STATE OF HAWAII



OFFICE OF THE AUDITOR STATE OF HAWAII

Constitutional Mandate

Pursuant to Article VII, Section 10 of the Hawai'i State Constitution, the Office of the Auditor shall conduct post-audits of the transactions, accounts, programs and performance of all departments, offices and agencies of the State and its political subdivisions.

The Auditor's position was established to help eliminate waste and inefficiency in government, provide the Legislature with a check against the powers of the executive branch, and ensure that public funds are expended according to legislative intent.

Hawai'i Revised Statutes, Chapter 23, gives the Auditor broad powers to examine all books, records, files, papers and documents, and financial affairs of every agency. The Auditor also has the authority to summon people to produce records and answer questions under oath.

Our Mission

To improve government through independent and objective analyses.

We provide independent, objective, and meaningful answers to questions about government performance. Our aim is to hold agencies accountable for their policy implementation, program management, and expenditure of public funds.

Our Work

We conduct performance audits (also called management or operations audits), which examine the efficiency and effectiveness of government programs or agencies, as well as financial audits, which attest to the fairness of financial statements of the State and its agencies.

Additionally, we perform procurement audits, sunrise analyses and sunset evaluations of proposed regulatory programs, analyses of proposals to mandate health insurance benefits, analyses of proposed special and revolving funds, analyses of existing special, revolving and trust funds, and special studies requested by the Legislature.

We report our findings and make recommendations to the Governor and the Legislature to help them make informed decisions.

For more information on the Office of the Auditor, visit our website:
<http://auditor.hawaii.gov>

Foreword

This is a report of our review of the special funds, revolving funds, trust funds, and trust accounts administered by the State of Hawai‘i, Department of Commerce and Consumer Affairs.

Section 23-12, Hawai‘i Revised Statutes, requires the Auditor to review all existing special, revolving, and trust funds once every five years. Although not mandated by statute, we included trust accounts as part of our review. This is our sixth review of the revolving funds, trust funds, and trust accounts, and our second review of the special funds of the Department of Commerce and Consumer Affairs.

We wish to express our appreciation for the cooperation and assistance extended to us by the officials and staff of the Department of Commerce and Consumer Affairs.

Leslie H. Kondo
State Auditor

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Chapter 1

Introduction

This review encompasses the special funds, revolving funds, trust funds, and trust accounts administered by the Department of Commerce and Consumer Affairs (DCCA). Section 23-12, Hawai‘i Revised Statutes (HRS), requires the Auditor to review each state department’s special, revolving, and trust funds every five years. For each fund, the Auditor’s review must include:

1. An evaluation of the original intent and purpose of the fund, both as expressed by the Legislature and as understood by the expending agency;
2. The degree to which the fund achieves its stated and claimed purposes;
3. An evaluation of the fund’s performance standards as established by the agency; and
4. A summary statement reflecting total fund transactions in the preceding five fiscal years, including the fund balance at the beginning of each fiscal year, total deposits and withdrawals, amount of interest earned, total expenditures made from the fund, and the ending balance for each fiscal year.

This is our sixth review of DCCA’s revolving funds, trust funds, and trust accounts.¹ It is our second review of DCCA’s special funds since Act 130, Session Laws of Hawai‘i (SLH) 2013, amended Section 23-12, HRS, to require review of special funds along with revolving funds and trust funds. Although not mandated by Section 23-12, HRS, we have included trust accounts as part of our review. Trust accounts, like special, revolving, and trust funds, are funded outside of the general fund appropriation process and are therefore generally subject to less legislative scrutiny than the State’s general fund. We last examined these funds and accounts in 2015.

¹ Prior to 2013, Section 23-12, HRS, did not require reviews of departments’ special funds.

Description of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts

Special funds

Section 37-62, HRS, defines a special fund as one that is “dedicated or set aside by law for a specified object or purpose, but excluding revolving funds and trust funds.” According to the State’s Accounting Manual, special funds are funds used to account for revenues earmarked for particular purposes and from which expenditures are made for those purposes.

Revolving funds

Section 37-62, HRS, defines a revolving fund as one “from which is paid the cost of goods and services rendered or furnished to or by a state agency and which is replenished through charges made for the goods or services or through transfers from other accounts or funds.” Activities commonly financed through revolving funds include loan programs, which are initially established by general fund seed moneys and are then replenished through the repayment of loans.

Trust funds

Section 37-62, HRS, defines a trust fund as one in which “designated persons or classes of persons have a vested beneficial interest or equitable ownership, or which was created or established by a gift, grant, contribution, devise or bequest that limits the use of the fund to designated objects or purposes.” Trust funds invoke a fiduciary responsibility of state government to care for and use only for those designated to benefit from the funds. A pension fund is an example of a trust fund. Contributions and payments are to be held for the beneficiaries of the pension fund. Another example is tenants’ security deposits, which are held in trust for the future benefit of tenants and landlords. Until forfeited or returned, deposits are the property of the tenants and should be accounted for accordingly.

Trust accounts

The Department of Accounting and General Services (DAGS) defines a trust account as a separate holding or clearing account for state agencies. Trust accounts also serve as accounting devices to credit or charge agencies or projects for payroll or other costs.

Criteria for Reviewing Special Funds, Revolving Funds, Trust Funds, and Trust Accounts

Special and revolving fund criteria

In 2002, the Legislature set the requirements for establishing and continuing special and revolving funds. Sections 37-52.3 and 37-52.4, HRS, state that special and revolving funds may only be established by statute. The criteria used to review special and revolving funds are the extent to which each fund:

- Serves a need, as demonstrated by: (a) the purpose of the program to be supported by the fund; (b) the scope of the program, including financial information on fees to be charged, sources of projected revenue, and costs; and (c) an explanation of why the program cannot be implemented successfully under the general fund appropriation process;
- Reflects a clear nexus between the benefits sought and charges made upon the program users or beneficiaries, or a clear link between the program and the sources of revenue – as opposed to serving primarily as a means to provide the program or users with an automatic means of support, removed from the normal budget and appropriation process;
- Provides an appropriate means of financing for the program or activity that is used only when essential to the successful operation of the program or activity; and
- Demonstrates the capacity to be financially self-sustaining.

Trust fund and trust account criteria

Unlike the requirements for special and revolving funds, the law is silent on whether a trust fund or trust account must be established by statute. The criteria used to review trust funds and trust accounts are the extent to which each fund and account:

- Continues to serve the purpose and intent for which it was originally created, and
- Meets the definition of a trust fund or trust account, respectively.

The first criterion is derived from the objectives of Section 23-12, HRS, which requires the Auditor to evaluate the original intent of each fund and the degree to which each fund achieves its stated purpose. The second criterion assesses whether a fund is held by the State only for the benefit of those with a vested interest in the assets or an account is held as a separate or clearing account.

Objectives of the Review

1. Identify and review all special funds, revolving funds, trust funds, and trust accounts of DCCA.
2. For each special fund, revolving fund, trust fund, and trust account, determine whether the fund or account meets the respective criteria.
3. Provide a five-year (FY2016 – FY2020) unaudited financial summary for each fund and account of DCCA.

Scope and Methodology

We reviewed all special funds, revolving funds, trust funds, and trust accounts directly administered by DCCA during the five-year period under review (FY2016 – FY2020). Funds and accounts included those established by statute as well as by administrative authority.

To identify funds subject to this review, we used a variety of sources, including our prior reviews, accounting reports from DAGS, non-general fund reports, legislative budget briefing documents, and other records. To gain an understanding of fund operations, we reviewed applicable agency administrative rules and interviewed key fiscal and program personnel, as necessary.

We obtained a summary statement for each fund that reflects total fund transactions in the preceding five fiscal years (July 1, 2015 to June 30, 2020), including beginning fund balances, total revenues, amount of interest earned, total expenditures, transfers, and ending fund balances for each fiscal year. We requested explanations for

discrepancies between ending balances for FY2015 reported in our last review and opening balances reported for FY2016. We did not audit DCCA's financial data, which we provide for informational purposes only.

Procedures were performed on each fund using relevant criteria as stated above. We reviewed fund information for consistency with the intent of each fund's use and to ascertain the relationship between charges on users and expenditures. We reviewed information on performance standards established for the funds or accounts and performed other procedures as necessary.

Where appropriate, we relied on our prior reports, including Report No. 15-12, *Review of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts of the Department of Commerce and Consumer Affairs*.

Our review was conducted from August to November 2020. Recommendations were made where applicable.

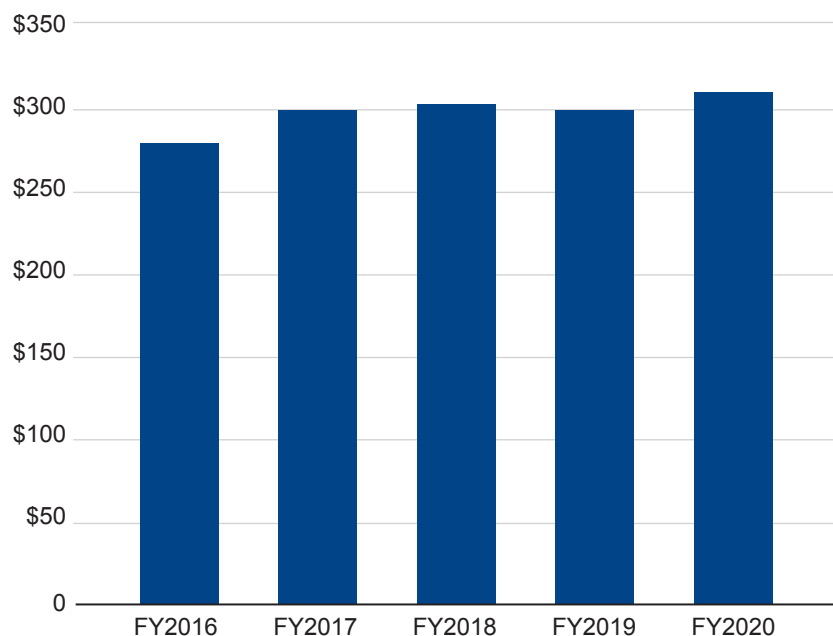
Chapter 2

Department of Commerce and Consumer Affairs

This section presents the results of our review of 20 special funds, 12 trust funds, and 7 trust accounts. Total fund fiscal year-end balances amounted to at least \$280 million per year during the period reviewed.

Exhibit 2.1 summarizes the totals for these fund balances at the end of each fiscal year.

Exhibit 2.1
Cash Balances for DCCA Non-General Funds
FY2016 – FY2020 (in millions)



Source: Office of the Auditor

Substantial amounts were also collected and expended by the funds annually. In FY2020, the special funds, trust funds, and trust accounts collected approximately \$93 million and spent or transferred approximately \$82 million.

Exhibit 2.2 presents totals for the combined revenue and interest, expenses, transfers, and ending fund balances for the different fund types for FY2020.

Exhibit 2.2
DCCA Fund and Account Totals by Type, FY2020

Fund Type	Revenue and Interest	Expenses and Transfers	FY2020 End Cash Balance
Special Funds	\$79,920,000	\$74,556,000	\$114,467,000
Trust Funds/Trust Accounts	12,939,000	7,617,000	196,404,000
Total	\$92,859,000	\$82,173,000	\$310,871,000

Source: Office of the Auditor

For each fund or account, we present a five-year financial summary, the purpose of the fund or account, and conclusions about its use and whether it meets the definition of a special fund, trust fund, or trust account. This review does not include an assessment of the effectiveness of the program or its management. Funds and accounts are presented in alphabetical order.

Exhibit 2.3 presents the DCCA funds and accounts that did not meet criteria for continuance and should be closed or reclassified.

Exhibit 2.3 presents the DCCA funds and accounts that did not meet criteria for continuance and should be closed or reclassified.

Exhibit 2.3
DCCA Funds and Accounts Not Meeting Criteria

Fund Name	Fund Type	FY2020 Ending Balance (rounded)	No longer serves original purpose and/or does not serve a need	No clear nexus between benefits sought and user charges or a clear link between the program and revenue sources	Inappropriate financing mechanism	Not financially self-sustaining	Does not meet special fund, revolving fund, trust fund, or trust account definition
Commissioner's Education and Training Fund	Trust Fund	\$1,469,000					✓
Compliance Resolution Fund— Appraisal Management Registration Program	Special	0	✓				
Electrical Vehicle Charging System Rebate Program	Special	150,000					✓
Service Contract Provider's Financial Security Deposit	Trust Account	50,000					✓
Total		\$1,669,000					

Source: Office of the Auditor

***Appraisal Management
Company Registry Fee
(trust account)***

***Administratively
established***

Financial Data for Fiscal Years 2017 – 2020 (in thousands)

	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$0	\$0	\$23	\$30
Revenues	0	23	7	2
Interest	0	0	0	0
Expenditures	0	0	0	0
Transfers	0	0	0	0
Ending Balance	\$0	\$23	\$30	\$32
Encumbrances	\$0	\$0	\$0	\$0

This account meets the criteria of a trust account and continues to serve the purpose for which it was originally established. Administratively established in 2017, the account is used as a clearing account for registry fees collected from certified appraisal management companies (AMC) for appraisals performed in conjunction with federally related transactions as mandated by the Federal Financial Institutions Examination Council. Failure of a state to collect and transfer registry fees is a violation of federal law and results in the removal of an AMC from the national registry. Revenues are from AMCs who pay the \$25 annual registry fee based on the number of Hawai'i appraisers they used in the previous year.

**Cable Television
(trust fund)**

**Administratively
established**

Financial Data for Fiscal Years 2016 – 2020 (in thousands)*					
	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$6,763	\$7,569	\$8,231	\$8,730	\$815
Revenues	800	654	486	0	67
Interest	6	8	13	5	1
Expenditures	0	0	0	0	0
Transfers**	0	0	0	(7,920)	0
Ending Balance	\$7,569	\$8,231	\$8,730	\$815	\$883
Encumbrances	\$0	\$0	\$0	\$0	\$0

*The financial data provided by DCCA is not consistent with the State's Financial Accounting and Management Information System (FAMIS) financial data for the T-907 Cable Television account. DCCA explained that the financial data they provided is based on non-general fund reports submitted to the Legislature and internal records. The account is held outside of the State Treasury by Spectrum Oceanic, LLC, pursuant to DCCA's January 14, 2010, Decision and Order No. 346 in Time Warner Entertainment Company's application for renewal of its cable franchise for the island of O'ahu.

**The department reported that the transfer in FY2019 of \$7,920,000 was made in compliance with Act 53, SLH 2018, which required the transfer of these funds to the Department of Education for institutional network purposes, including upgrading equipment to transport network traffic among the islands of Kaua'i, O'ahu, Maui, and Hawai'i and upgrading or replacing fiber connectivity and associated telecommunications equipment in schools to increase bandwidth.

This fund meets the criteria of a trust fund and continues to serve the purpose for which it was originally established. Administratively established in 2001, this fund was repurposed following Decision and Order No. 346 by the DCCA on January 14, 2010 regarding Time Warner Entertainment Company's application for renewal of its cable franchise for the island of O'ahu. Under Decision and Order No. 346, excess franchise fees above the cap established by the Decision and Order are placed into this fund for institutional network and broadband purposes. Revenues are from excess franchise fees paid by Spectrum Oceanic, LLC. Expenditures must be expressly authorized in writing by the DCCA Director or by the Cable Television Division Administrator and appropriated by the Legislature.

***Captive Insurance
Administrative Fund
(special fund)***

***Section 431:19-101.8,
HRS***

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$5,349	\$6,012	\$6,747	\$7,642	\$8,563
Revenues	2,391	2,476	2,712	2,934	3,283
Interest	31	43	42	51	281
Expenditures	(1,759)	(1,784)	(1,859)	(2,064)	(2,903)
Transfers	0	0	0	0	0
Ending Balance	\$6,012	\$6,747	\$7,642	\$8,563	\$9,224
Encumbrances	\$20	\$26	\$9	\$41	\$143

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 1997, the fund is used by the Insurance Commissioner to carry out duties and obligations under Chapter 431, Article 19, HRS. Revenues are from captive insurance premium taxes, company application fees, annual licensing fees, and examination fees. Expenditures include personnel, administrative overhead, travel, promotional and professional service contracts related to examinations, and equipment.

The department reported that expenditures in FY2020 increased substantially as the program is developing a new IT regulatory system specific to captive insurance needs.

***Captive Insurance
Companies LOC
Escrow
(trust account)***

***Administratively
established***

Financial Data for Fiscal Years 2016 – 2020 (in thousands)					
	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$1	\$1	\$1	\$1	\$1
Revenues	0	0	0	0	0
Interest	0	0	0	0	0
Expenditures	0	0	0	0	0
Transfers	0	0	0	0	0
Ending Balance	\$1	\$1	\$1	\$1	\$1
Encumbrances	\$0	\$0	\$0	\$0	\$0

This account meets the criteria of a trust account and continues to serve the purpose for which it was originally established. Administratively established in 2001, the account is used to deposit letters of credit (LOC) held in favor of the Insurance Commissioner. The commissioner may draw on the LOC when a captive insurance company is in adverse financial condition, is dissolving, or has its license revoked or suspended. The LOC is used to cover liabilities of the captive insurance company including claims, creditors, fees and fines.

**Commissioner's
Education and Training
Fund
(trust fund)**

Section 431:2-214, HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$1,146	\$1,219	\$1,345	\$1,409	\$1,418
Revenues	152	173	136	145	101
Interest	7	10	9	11	52
Expenditures	(86)	(57)	(81)	(147)	(102)
Transfers	0	0	0	0	0
Ending Balance	\$1,219	\$1,345	\$1,409	\$1,418	\$1,469
Encumbrances	\$10	\$14	\$21	\$23	\$20

This fund does not meet all the criteria of a trust fund because it functions more like a special fund, but continues to serve the purpose for which it was originally established. Statutorily established in 1987, the fund is used to provide Insurance Division staff with various education and training opportunities and to conduct consumer educational outreach through publications, media, and attendance at consumer fairs. Revenues are from rate filing fees charged to insurance companies. Expenditures include training and conference fees, travel expenses and educational materials.

In our prior review of the fund, Report No. 15-12, we similarly concluded that the fund operates like a special fund. We stated that the fund did not meet the definition of a trust fund because there are no designated persons or classes of persons having a vested beneficial interest or equitable ownership in the assets of the fund. In its response, DCCA stated that the fund was established for the education and training of Insurance Division employees, as well as for the benefit of individuals interested in insurance topics, and that Insurance Division employees and Hawai'i's insurance consumers have an interest in education and training.

We maintain that the fund operates like a special fund, using revenues for statutorily allowed purposes rather than being held in trust for designated persons or classes of persons having a vested beneficial interest or equitable ownership and should be reclassified.

**Compliance Resolution
Fund—Appraisal
Management
Registration Program
(special fund)**

**Administratively
established**

Financial Data for Fiscal Years 2017 – 2018 (in thousands)*

	FY2017	FY2018
Beginning Balance	\$0	\$0
Revenues	0	0
Interest	0	0
Expenditures	0	0
Transfers	0	0
Ending Balance	\$0	\$0
Encumbrances	\$0	\$0

*The department believes this fund has not yet been closed. However, FAMIS Account Summary downloads from Data Mart did not return any records of financial data after FY2018.

This fund does not meet the criteria of a special fund. The fund should be closed because it no longer serves the purposes for which it was originally established. Additionally, this fund does not meet the criteria of a special fund because it was inappropriately created. In 2002, the Legislature set the requirements for establishing and continuing special funds. Section 37-52.3, HRS, states that special funds may only be established by statute.

Administratively established in 2017, the department intended to use the fund to establish a regulatory framework for appraisal management companies. However, the department reported that the program is currently funded through the Compliance Resolution Fund—Professional, Vocational, and Personal Services special fund (S-305). The department agrees that this fund should be closed.

***Compliance Resolution
Fund—Behavior
Analyst Program
(special fund)***

Section 26-9, HRS

Financial Data for Fiscal Years 2016 – 2019 (in thousands)

	FY2016	FY2017	FY2018	FY2019
Beginning Balance	\$0	\$2	\$4	\$1
Revenues	7	2	1	0
Interest	0	0	0	0
Expenditures	(5)	0	0	0
Transfers*	0	0	(4)	(1)
Ending Balance	\$2	\$4	\$1	\$0
Encumbrances	\$0	\$0	\$0	\$0

*Transfers of unused funds to the Compliance Resolution Fund—Professional, Vocational, and Personal Services special fund.

This fund was closed in FY2019 and the remaining balance was transferred to the Compliance Resolution Fund-Professional, Vocational, and Personal Services special fund. Statutorily established in 2015, the fund was used to implement DCCA's regulation of behavior analysts. Revenues were from license fees, renewal fees, and a \$50 surcharge. Expenditures included costs incurred by DCCA in implementing the program, including personnel and operating expenditures.

**Compliance Resolution
Fund—Business
Registration
(special fund)**

Section 26-9, HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$11,484	\$11,584	\$15,041	\$18,887	\$22,965
Revenues	6,682	10,304	11,282	12,086	10,864
Interest	70	93	96	141	798
Expenditures	(5,615)	(5,969)	(6,414)	(7,029)	(7,494)
Transfers*	(1,037)	(971)	(1,118)	(1,120)	(1,192)
Ending Balance	\$11,584	\$15,041	\$18,887	\$22,965	\$25,941
Encumbrances	\$97	\$78	\$453	\$227	\$76

*Transfers to the Compliance Resolution Fund—General Support, Protection of the Consumer special fund to cover administrative overhead.

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 1993, the fund is used to support the operations of the Business Registration Division. Revenues are from fees associated with business registrations, licenses, penalties, and other services. Expenditures include personnel and operational costs associated with the division, including training, outreach materials, and development of new technology to provide users with access to information contained in the various registries that the division maintains.

Compliance Resolution Fund—Cable Television (special fund)

Section 26-9, HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$5,290	\$6,756	\$8,429	\$9,805	\$11,024
Revenues	2,841	3,109	2,936	3,046	160
Interest	33	51	54	71	373
Expenditures	(1,049)	(1,161)	(1,267)	(1,541)	(1,079)
Transfers*	(359)	(326)	(347)	(357)	(373)
Ending Balance	\$6,756	\$8,429	\$9,805	\$11,024	\$10,105
Encumbrances	\$814	\$562	\$533	\$915	\$917

*Transfers to the Compliance Resolution Fund—General Support, Protection of the Consumer special fund to cover administrative overhead.

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 1999, the fund is used to support the administration of the DCCA Director's duties and responsibilities regarding cable television operators and the services they provide as set forth in Chapter 440G, HRS. Revenues are from regulatory annual fees paid by the two cable television operators in the State and accrued interest. We note that DCCA reported that revenues are based on gross revenues of cable television operations in the State which vary from year to year. At the discretion of the DCCA Director, a portion of the revenues that are deposited into the fund may be used for recognized programs or services through a Decision and Order issued by the DCCA Director. Expenditures include costs associated with DCCA's Cable Television Division and programs administered by the division.

**Compliance Resolution
Fund—Financial
Services Regulation
(special fund)**

Section 26-9, HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$7,860	\$9,480	\$10,911	\$11,366	\$11,499
Revenues	5,070	5,509	5,615	5,420	4,659
Interest	45	69	63	84	393
Expenditures	(2,915)	(3,513)	(4,579)	(4,682)	(4,624)
Transfers*	(580)	(634)	(644)	(689)	(728)
Ending Balance	\$9,480	\$10,911	\$11,366	\$11,499	\$11,199
Encumbrances	\$30	\$505	\$156	\$184	\$62

*Transfers to the Compliance Resolution Fund—General Support, Protection of the Consumer special fund to cover administrative overhead.

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 1999, the fund is used to support the Division of Financial Institutions—specifically, to appoint examiners to examine the affairs of financial institutions, escrow depositories, money transmitters, mortgage loan originators, mortgage loan companies, and mortgage services; to appoint administrative support personnel; and to pay for any expenses incurred during examinations or necessary for the education and training of personnel. Revenues are from annual fees assessed to all licensees and annual transfers of \$2 million in franchise taxes collected from banks, building and loan associations, development companies, financial corporations, financial services loan companies, trust companies, mortgage loan companies, financial holding companies, and qualifying subsidiaries. Expenditures include expenses for staff, including salary benefits, equipment, supplies and furniture.

Compliance Resolution Fund—General Support, Protection of the Consumer (special fund)

Section 26-9, HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)*

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$2,875	\$3,222	\$3,635	\$3,729	\$2,865
Revenues	936	1,186	849	945	1,538
Interest	16	24	21	28	118
Expenditures	(6,778)	(6,883)	(7,250)	(8,515)	(8,320)
Transfers**	6,173	6,086	6,474	6,678	7,255
Ending Balance	\$3,222	\$3,635	\$3,729	\$2,865	\$3,456
Encumbrances	\$210	\$172	\$194	\$43	\$187

*FY2016 beginning balance does not agree to FY2015 ending balance reported in Report No. 15-12 because the financial data presented above is a consolidation of the Compliance Resolution Fund—General Support, Protection of the Consumer (special fund, S-310) and the Protocol Funds for Executive Heads account (special fund, S-398). In our previous report, we did not report these as consolidated funds. The department reported that the Protocol Funds for Executive Heads account receives revenues solely from transfers from the Compliance Resolution Fund—General Support, Protection of the Consumer special fund.

**The department reported that funds were transferred from various DCCA accounts to cover administrative overhead. The department also reported that for FY2016 and FY2017, funds were transferred from the Mortgage Foreclosure Dispute Resolution Fund as reimbursements for funds loaned to the program.

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 1999, the fund is used to support the general policy and administrative leadership in supervising and coordinating various department activities. Activities include protecting the interests of consumers, depositors, and investors throughout the state; setting standards and enforcing all laws, rules, and regulations governing the licensing and operations of trades, businesses, and professions; registering and supervising the conduct of trades, businesses, and professions; and administering the attached boards and commissions. Revenues are from departmental administrative expense assessments, administrative fees from the Medical Inquiry and Conciliation Panel claim fees, rebates, and investment pool interest. Expenditures include personnel costs, as well as other current expenses including building maintenance services, utilities, legal services and support, and other general operating expenses.

**Compliance Resolution
Fund—Insurance
Regulation Fund
(special fund)**

Section 26-9, HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)					
	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$3,536	\$5,055	\$4,374	\$4,690	\$3,090
Revenues	9,672	8,594	10,273	9,479	11,530
Interest	20	35	27	32	152
Expenditures	(6,668)	(7,923)	(8,425)	(9,506)	(9,300)
Transfers*	(1,505)	(1,387)	(1,559)	(1,605)	(1,726)
Ending Balance	\$5,055	\$4,374	\$4,690	\$3,090	\$3,746
Encumbrances	\$1,158	\$589	\$725	\$403	\$710

*Transfers to the Compliance Resolution Fund—General Support, Protection of the Consumer special fund to cover administrative overhead.

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 1999 as the Insurance Regulation Fund, and later merged with the Compliance Resolution Fund in 2002, the fund is used to provide support to the DCCA's Insurance Division. The Insurance Division ensures that consumers are provided with insurance services meeting acceptable standards of quality, equity, and dependability at fair rates by establishing and enforcing appropriate service standards and fairly administering the Insurance Code. Revenues are from fees, fines, penalties, assessments, and reimbursements collected by or on behalf of the Insurance Division. Expenditures include administrative costs (including personnel costs) associated with all of the programs of the Insurance Division and costs incurred by support offices and divisions.

Compliance Resolution Fund—Licensure by Endorsement Program (special fund)

Administratively established

Financial Data for Fiscal Years 2018 – 2019 (in thousands)

	FY2018	FY2019
Beginning Balance	\$0	\$0
Revenues	0	0
Interest	0	0
Expenditures	0	0
Transfers	0	0
Ending Balance	\$0	\$0
Encumbrances	\$0	\$0

This fund was closed in FY2019 with no remaining balance to transfer. Administratively established in 2018, the department intended to use the fund to establish requirements for licensure by endorsement for physicians, surgeons, and osteopathic physicians. The department reported that appropriations initially intended for this fund were moved to the Compliance Resolution Fund—Professional, Vocational, and Personal Services special fund (S-305) through a supplemental budget request. The fund was subsequently closed in FY2019.

**Compliance Resolution
Fund—Licensure of
Midwives
(special fund)**

**Sections 26-9 and
457J-7, HRS**

Financial Data for Fiscal Years 2019 – 2020 (in thousands)

	FY2019	FY2020
Beginning Balance	\$0	\$0
Revenues	0	0
Interest	0	0
Expenditures	0	0
Transfers	0	0
Ending Balance	\$0	\$0
Encumbrances	\$0	\$0

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 2019, the fund will be used to support DCCA’s regulation of the midwifery profession. As reported by the department, revenues will come from fees charged to applicants and licensees. Expenditures will include personnel and other operating expenses to support the regulation of midwives.

Compliance Resolution Fund—Office of Consumer Protection—Unfair/Deceptive Practice (special fund)

Section 26-9 HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$5,695	\$6,264	\$7,399	\$9,276	\$11,160
Revenues	2,260	3,219	4,003	4,367	1,143
Interest	40	44	43	65	374
Expenditures	(1,731)	(1,857)	(1,863)	(2,219)	(2,309)
Transfers*	0	(271)	(306)	(329)	(355)
Ending Balance	\$6,264	\$7,399	\$9,276	\$11,160	\$10,013
Encumbrances	\$20	\$65	\$51	\$73	\$47

*Transfers to the Compliance Resolution Fund—General Support, Protection of the Consumer special fund to cover administrative overhead.

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 1999, the fund is used to support the operations of the Office of Consumer Protection. Revenues are from fines, penalties, reimbursement costs, attorney fees, and sales of public documents. Expenditures include personnel costs, litigation, and general operating expenses. The department noted that the amount of revenue received in a fiscal year depends on the nature and timing of the cases that are resolved.

**Compliance Resolution
Fund—Post-
Secondary Education
Authorization Special
Subaccount
(special fund)**

Section 305J-19, HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$337	\$367	\$228	\$291	\$258
Revenues	240	97	283	163	259
Interest	1	2	1	2	9
Expenditures	(171)	(201)	(183)	(198)	(189)
Transfers*	(40)	(37)	(38)	0	(42)
Ending Balance	\$367	\$228	\$291	\$258	\$295
Encumbrances	\$0	\$0	\$0	\$0	\$2

*Transfers to the Compliance Resolution Fund—General Support, Protection of the Consumer special fund to cover administrative overhead.

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 2013, the fund is used to support a Post-Secondary Education Authorization Program intended to create a framework for authorizing accredited, degree-grant post-secondary educational institutions in the State. Revenues are primarily from authorizations, re-authorization, and complaint administration fees, in addition to fees associated with the State Authorizing Reciprocity Agreement and transcript requests. The department reported that there are differences in revenue every year because the authorized post-secondary institutions renew their authorizations biennially at different times of the year resulting in variances in revenue between fiscal years. Expenditures include personnel costs and the program's operational expenses.

We note that the department reported that its own projections show that this fund may not have the capacity to be financially self-sustaining because further increases in fees is not feasible. The department believes that this fund will likely require an infusion of general funds in the near future. Should this occur, the fund would not meet the criteria of a special fund and should be repealed.

Compliance Resolution Fund—Professional, Vocational, and Personal Services (special fund)

Section 26-9, HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$4,639	\$5,468	\$6,716	\$9,025	\$9,545
Revenues	7,687	7,768	9,387	7,616	8,798
Interest	27	43	39	55	340
Expenditures	(5,986)	(5,705)	(6,178)	(6,144)	(6,786)
Transfers*	(899)	(858)	(939)	(1,007)	(1,110)
Ending Balance	\$5,468	\$6,716	\$9,025	\$9,545	\$10,787
Encumbrances	\$43	\$148	\$1,043	\$61	\$949

*Transfers to the Compliance Resolution Fund—General Support, Protection of the Consumer special fund to cover Administrative Overhead. The department also reported that during FY2018 and FY2019, unused balance funds were transferred from the Compliance Resolution Fund—Behavior Analyst Program.

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 1993, the fund is used for the operations of the Professional and Vocational Licensing Division (PVL). PVL ensures that individuals are provided with professional, vocational, and personal services meeting acceptable standards of quality, equity, and dependability. PVL establishes and enforces appropriate service standards and regulates activities for the protection, welfare, and safety of the participants and the public. Revenues are from fees charged to applicants, licensees, and the general public for services provided. DCCA reported that renewal fees are collected on a biennial and triennial basis, resulting in revenue variances between fiscal years. Expenditures include personnel and other operating expenses, such as processing applications for licensure, examining applicants, issuing and renewing licenses, updating licensee files, and providing information and guidance to the public.

**Compliance Resolution
Fund—Public Utilities
Commission (PUC)
Special Fund—
Consumer Advocacy
(special fund)**

**Sections 26-9 and 269-
33, HRS**

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$6,424	\$7,477	\$8,465	\$9,008	\$10,218
Revenues	4,176	4,351	4,348	4,350	4,506
Interest	42	55	50	68	345
Expenditures	(2,575)	(2,876)	(3,292)	(2,638)	(3,415)
Transfers*	(590)	(542)	(563)	(570)	(632)
Ending Balance	\$7,477	\$8,465	\$9,008	\$10,218	\$11,022
Encumbrances	\$1,736	\$2,057	\$1,685	\$1,795	\$1,277

*Transfers to the Compliance Resolution Fund—General Support, Protection of the Consumer special fund to cover administrative overhead.

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 1994, the fund is used to support operations of the department's Division of Consumer Advocacy. The division represents, protects, and advances the interests of Hawai'i's consumers of regulated utility and transportation services by ensuring that regulated companies are complying with applicable laws and rules. Revenues are from quarterly transfers from the Public Utilities Commission Special Fund in an amount consistent with legislative appropriations to the Division of Consumer Advocacy, pursuant to Section 269-33, HRS. Expenditures include personnel costs, expenses incurred to engage consulting services, and operational and administrative costs.

**Compliance Resolution
Fund—Regulated
Industries Complaints
Office
(special fund)**

Section 26-9, HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$6,755	\$7,543	\$9,767	\$10,669	\$11,929
Revenues	7,014	9,190	8,240	8,660	7,817
Interest	38	59	56	76	413
Expenditures	(5,351)	(6,115)	(6,440)	(6,476)	(6,491)
Transfers*	(913)	(910)	(954)	(1,000)	(1,097)
Ending Balance	\$7,543	\$9,767	\$10,669	\$11,929	\$12,571
Encumbrances	\$498	\$555	\$101	\$54	\$442

*Transfers to the Compliance Resolution Fund—General Support, Protection of the Consumer special fund to cover administrative overhead costs.

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 1993, the fund is used to support the Regulated Industries Complaint Office (RICO). RICO is a regulatory agency that protects the health, safety, and welfare of consumers of certain professional services in the State by interpreting and applying licensing law regulation through the investigation, prosecution, and resolution of complaints involving the furnishing of services or real estate for which a license, registration, or certification is required by a regulatory board, commission or program in DCCA. Revenues are from licensing and renewal fees, fines, interest earned on collections, and charges collected for document duplication. Expenditures include personnel and operational costs, such as rents and utilities for certain neighbor island offices, equipment leases statewide, postage, copying fees and general equipment and supplies, employee equipment, subscriptions, court fees, publication expenses, and administrative overhead.

**Condominium
Education Trust Fund
(trust fund)**

Section 514B-71, HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)					
	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$1,889	\$1,634	\$2,548	\$2,186	\$2,251
Revenues	178	1,458	232	761	145
Interest	5	12	12	20	75
Expenditures	(438)	(556)	(606)	(716)	(727)
Transfers	0	0	0	0	0
Ending Balance	\$1,634	\$2,548	\$2,186	\$2,251	\$1,744
Encumbrances	\$0	\$2	\$1	\$29	\$1

This fund continues to serve the purpose for which it was created and meets the criteria for a trust fund. Statutorily established in 2005, the fund is used by the Real Estate Commission for education and research purposes, including financing and promoting education and research in condominium management, condominium product registration, and real estate; improving the administration of associations; and finding expeditious and inexpensive procedures for resolving association disputes. Revenues come from condominium association registration fees, late filing fees, new project application fees, and fund investment interest. Expenditures include personnel costs and contract costs for educational seminars, publications, subsidized mediation, and arbitration.

The department reported that the Condominium Education Trust Fund's balance has been increasing due to rollover of legislatively created evaluative mediation statutory fees. In FY2019, biennial association registration fees were reduced by 50% to slow the fund's growing balance. The department also noted that expenditures have increased in line with the increase in the Commission's educational outreach by way of various events, free seminars, and additional educational material.

**Contractors Education
Fund
(trust fund)**

Section 444-29, HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$501	\$510	\$552	\$561	\$606
Revenues	5	37	5	36	3
Interest	8	10	9	12	57
Expenditures	(4)	(5)	(5)	(3)	(11)
Transfers	0	0	0	0	0
Ending Balance	\$510	\$552	\$561	\$606	\$655
Encumbrances	\$0	\$0	\$0	\$0	\$1

This fund meets the criteria of a trust fund and continues to serve the purpose for which it was originally established. Statutorily established in 1973, the fund is used by the Contractors License Board to finance educational programs for the public, licensees, board members, and staff. Revenues are from interest earned on investment of the moneys held in the Contractors Recovery Fund and the Contractors Education Fund. Expenditures include dues, travel and registration fees for national association regulatory meetings, neighbor island travel expenses, production of education materials, and overtime pay.

We note that, as of July 1, 2020 (FY2021), Section 444-29, HRS, requires the Contractors License Board to take the following actions once this fund attains a funding level of \$15,315: (1) cease accepting payments made by renewing licensees; or (2) develop a process to refund monies in excess of the \$15,315 fund balance to licensees who paid into the fund, and refund such monies.

**Contractors Recovery
Fund
(trust fund)**

Section 444-26, HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$838	\$792	\$891	\$925	\$984
Revenues	77	154	73	133	59
Interest	0	0	0	0	0
Expenditures	(123)	(55)	(39)	(74)	(139)
Transfers	0	0	0	0	0
Ending Balance	\$792	\$891	\$925	\$984	\$904
Encumbrances	\$0	\$4	\$2	\$0	\$0

This fund meets the criteria of a trust fund and continues to serve the purpose for which it was originally established. Statutorily established in 1973, the fund is maintained by the Contractors License Board and is used as a fund from which any person injured by an act, representation, transaction, or conduct of a duly licensed contractor may seek to recover damages. Revenues are from contractor license fees, including a non-refundable fee of \$150 into the fund upon licensure and \$10 upon license renewal. Expenditures include awards to injured consumers (in an amount not to exceed \$12,500 per contract) and attorney-consultant fees for private legal counsel retained by the Contractors License Board.

**Drivers Education
Fund
(special fund)**

**Section 431:10C-115,
HRS**

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$434	\$549	\$737	\$430	\$115
Revenues	3,148	3,221	3,228	3,217	3,216
Interest	5	6	9	13	35
Expenditures	0	0	0	0	0
Transfers*	(3,038)	(3,039)	(3,544)	(3,545)	(3,362)
Ending Balance	\$549	\$737	\$430	\$115	\$4
Encumbrances	\$0	\$0	\$0	\$0	\$0

*These transfers were categorized as “Expenditures” in FAMIS. However, DCCA stated that these expenditures were actually transfers to the Department of Education (DOE) and the Judiciary for driver education programs as permitted under Section 431:10C-115, HRS.

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 1987, the fund is used to support a drivers education program for high school students administered by DOE and a traffic safety education program administered by the Judiciary. Revenues are from a \$3 underwriters fee assessed to each motor vehicle insured by each insurer or self-insurer.

**Electrical Vehicle
Charging System
Rebate Program
(special fund)**

**Administratively
established**

Financial Data for Fiscal Years 2019 – 2020 (in thousands)

	FY2019	FY2020
Beginning Balance	\$0	\$0
Revenues	0	150
Interest	0	0
Expenditures	0	0
Transfers	0	0
Ending Balance	\$0	\$150
Encumbrances	\$0	\$150

This fund does not meet the criteria of a special fund because it was inappropriately created after 2002. In 2002, the Legislature set the requirements for establishing and continuing special funds. Section 37-52.3, HRS, states that special funds may only be established by statute.

Administratively established in 2019, the fund is used to support the Electric Vehicle Charging System Rebate Program, which was created by Act 142, SLH 2019. For FY2020, Act 142 appropriated \$150,000 out of the Energy Security Special Fund for deposit into the DCCA's Public Utilities Commission Special Fund. Act 142 does not establish a separate special fund for this program. Rather, Act 142 tasked the Public Utilities Commission with administering a program that incentivizes the installation or upgrade of an electric vehicle charging system and appropriated funds to the Public Utilities Commission Special Fund for that purpose. This administratively established fund was inappropriately created and should be closed.

***Hawai'i Hurricane
Relief Fund
(trust fund)***

***Sections 431P-2 and
431P-16, HRS***

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$126,645	\$182,440	\$186,936	\$182,159	\$177,857
Revenues	58,411	7,769	0	0	10,247
Interest	0	0	0	0	0
Expenditures	(2,616)	(3,273)	(4,777)	(4,302)	(4,264)
Transfers	0	0	0	0	0
Ending Balance	\$182,440	\$186,936	\$182,159	\$177,857	\$183,840
Encumbrances	\$0	\$0	\$0	\$0	\$0

This fund meets the criteria of a trust fund and continues to serve the purpose for which it was originally established. Statutorily established in 1993, the fund is used to receive moneys for the administration of the Hawai'i Hurricane Relief Fund (HHRF). The fund is empowered to assess the availability of hurricane insurance from all sources and to provide hurricane insurance coverage should the private market prove unreliable. Currently, revenues are generated solely from the fund's investment portfolio because the HHRF is not issuing insurance policies. If the Commissioner determines that the HHRF needs to begin issuing hurricane insurance policies, then revenue would come from premiums on policies, assessments on insurance companies, and special mortgage recording fees. In addition, any proceeds under reinsurance from loans and other monies from the federal government will be deposited into the fund. Should insurance claims exceed the fund, the fund is authorized to increase its assessments from insurance companies and to levy a surcharge not to exceed 7.5 percent a year on premiums charged for policies issued by all licensed property and casualty insurers. Expenditures include investment manager fees, annual audit fees, storage fees, and bank service charges.

We note that the department reported that revenues can fluctuate based on changes in unrealized and realized gains and losses in the investment portfolio. The department also reported that revenue recorded in FY2016 includes a \$55.5 million transfer from the general fund pursuant to Act 62, SLH 2011.

**Insurance Division
Restitution
(trust account)**

**Administratively
established**

Financial Data for Fiscal Years 2016 – 2020 (in thousands)					
	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$0	\$0	\$0	\$0	\$0
Revenues	0	0	0	0	0
Interest	0	0	0	0	0
Expenditures	0	0	0	0	0
Transfers	0	0	0	0	0
Ending Balance	\$0	\$0	\$0	\$0	\$0
Encumbrances	\$0	\$0	\$0	\$0	\$0

This account meets the criteria of a trust account and continues to serve the purpose for which it was originally established. Administratively established in 2011, the account is used to manage restitution payments to individuals harmed by a regulated entity. Revenues are from penalties assessed by the Insurance Commissioner to regulated entities. Although there has been no activity throughout this review period, the account remains open because the Insurance Commissioner has the authority to assess and collect restitution payments in the future.

***Mortgage Foreclosure
Dispute Resolution
Fund
(special fund)***

Section 667-86, HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$337	\$153	\$60	\$102	\$113
Revenues	68	59	45	11	4
Interest	2	2	0	1	4
Expenditures	(4)	(4)	(3)	(1)	(1)
Transfers*	(250)	(150)	0	0	0
Ending Balance	\$153	\$60	\$102	\$113	\$120
Encumbrances	\$0	\$0	\$0	\$0	\$0

*Transfers to the Compliance Resolution Fund—General Support, Protection of the Consumer special fund as reimbursements for funds loaned to the program.

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 2011, the fund is used to operate the DCCA's Mortgage Foreclosure Dispute Resolution Program. Implementation of the program includes contracting with mediation centers and paying for training of mediators in dispute resolution methodology particular to the program. The program provides information to distressed mortgagors regarding foreclosures and administers the Mortgage Foreclosure Dispute Resolution Program. Revenues are from fees collected for participation in the dispute resolution program and for filing notices on the Electronic Publication Notice of Public Sale website. Expenditures include personnel costs and general operating expenses. We note that the department reported that the decrease in revenues reflect a decline in user fees collected due to a corresponding decrease in the number of foreclosures filed.

***Mortgage Loan
Recovery Fund
(trust fund)***

Section 454F-41, HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$1,430	\$1,578	\$1,814	\$1,991	\$2,155
Revenues	148	236	177	164	52
Interest	0	0	0	0	0
Expenditures	0	0	0	0	0
Transfers	0	0	0	0	0
Ending Balance	\$1,578	\$1,814	\$1,991	\$2,155	\$2,207
Encumbrances	\$0	\$0	\$0	\$0	\$0

This fund meets the criteria of a trust fund and continues to serve the purpose for which it was originally established. Statutorily established in 2010, the fund allows persons aggrieved by an act, representation, transaction or conduct of a mortgage industry licensee to recover damages sustained by the fraud, misrepresentation, or deceit. Individuals may recover up to \$25,000 per transaction as ordered by a circuit or district court where the violation occurred. Revenues are from fees paid by licensees at initial licensure and renewal. Expenditures include damage awards of no more than \$25,000 per transaction, which includes court costs and fees as set by law and reasonable attorney fees as determined by the court.

***Motorcycle and Motor
Scooter Operators
Education Fund
(special fund)***

***Section 431:10G-107,
HRS***

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$0	\$0	\$0	\$0	\$0
Revenues	62	61	56	55	55
Interest	0	0	0	0	0
Expenditures	0	0	0	0	0
Transfers*	(62)	(61)	(56)	(55)	(55)
Ending Balance	\$0	\$0	\$0	\$0	\$0
Encumbrances	0	0	0	0	0

*Transfers to the Department of Transportation for the administration of a drivers education program for operators of motorcycles and motor scooters.

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 1989, the fund is used to support a drivers education program administered by the Department of Transportation for operators of motorcycles and motor scooters. Revenues are from a \$2 underwriters fee assessed to each motorcycle or motor scooter insured by each insurer or self-insurer.

**Multi-State Mortgage
Services Agreement
Fund
(trust account)**

**Administratively
established**

Financial Data for Fiscal Years 2016 – 2020 (in thousands)					
	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$1,013	\$712	\$1,038	\$481	\$369
Revenues	184	502	0	0	0
Interest	0	0	0	0	0
Expenditures	(485)	(176)	(557)	(112)	(127)
Transfers	0	0	0	0	0
Ending Balance	\$712	\$1,038	\$481	\$369	\$242
Encumbrances	\$4	\$435	\$0	\$0	\$0

This account meets the criteria of a trust account and continues to serve the purpose for which it was originally established. Administratively established in 2012, the account is used by the DCCA's Office of Consumer Protection to monitor compliance with a multi-state mortgage servicer settlement agreement, supervise and regulate the mortgage loan industry, and provide consumer education. The account is also used by the DCCA's Division of Financial Institutions to provide regulatory oversight and supervision of mortgage loan originator companies and mortgage servicer companies by verifying compliance with regulations and laws. Revenues are from a multi-state settlement agreement with several mortgage servicers. Expenditures include salaries for mortgage industry examiners and related computer equipment and training.

***Premium Taxes Paid
Pending Appeal
(trust account)***

***Administratively
established***

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$2,265	\$2,816	\$1,905	\$1,905	\$0
Revenues	551	0	0	0	0
Interest	0	0	0	0	0
Expenditures	0	(911)	0	(1,905)	0
Transfers	0	0	0	0	0
Ending Balance	\$2,816	\$1,905	\$1,905	\$0	\$0
Encumbrances	\$0	\$0	\$0	\$0	\$0

This account meets the criteria of a trust account and continues to serve the purpose for which it was originally established. Administratively established in 1983, the account is used as a holding account for premium tax payments made under protest by insurance companies. Revenues are from premium taxes paid under protest by insurance companies for various reasons, including a contested tax penalty, disallowed tax credit, or contested tax payment on finance charges. Expenditures include refunds of tax payments paid pending appeal and payments to the State for the balance of the tax payments that were not refunded.

**Public Utilities
Commission Special
Fund
(special fund)**

Section 269-33, HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$0*	\$7,877	\$7,851	\$5,512	\$5,761
Revenues	22,497	19,176	16,905	17,564	18,301
Interest	0	0	0	0	0
Expenditures	(13,917)	(9,562)	(9,479)	(9,662)	(10,641)
Transfers**	(703)	(9,640)	(9,765)	(7,653)	(7,587)
Ending Balance	\$7,877	\$7,851	\$5,512	\$5,761	\$5,834
Encumbrances	\$2,010	\$1,752	\$1,208	\$1,697	\$3,360

*On July 1, 2015, administrative placement of the fund was transferred from the Department of Budget and Finance (B&F) to DCCA pursuant to Act 108, SLH 2014. B&F transferred \$1 million in start-up funds and all PUC contract encumbrances.

**Transfers from B&F for startup funds and contract encumbrances. Transfers to Department of Accounting and General Services accounts S-360 and S-368 for Kekūānaō‘a Building renovation project. Transfers to Compliance Resolution Fund-Public Utilities Commission (PUC) Special Fund-Consumer Advocacy for quarterly allocation pursuant to Section 269-33(a), HRS. Transfer to the general fund for remaining balance on June 30 of each year in excess of \$1 million pursuant to HRS 269-33(d).

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 1994, the fund is used by PUC and DCCA’s Division of Consumer Advocacy for all expenses incurred in the administration of Chapters 269, 271, 271G, 269E, and 486J, HRS. Revenues are from annual fees charged to public utilities and motor carriers and various fees and penalties charged by PUC. Expenditures include PUC and Division of Consumer Advocacy’s operating expenses.

***Real Estate Appraisers
(trust account)******Administratively
established*****Financial Data for Fiscal Years 2016 – 2020 (in thousands)**

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$5	\$5	\$5	\$4	\$4
Revenues	38	2	38	2	36
Interest	0	0	0	0	0
Expenditures	(38)	(2)	(39)	(2)	(12)
Transfers	0	0	0	0	0
Ending Balance	\$5	\$5	\$4	\$4	\$28
Encumbrances	\$0	\$0	\$0	\$0	\$0

This account meets the criteria of a trust account and continues to serve the purpose for which it was originally established. Administratively established in 1991, the account is used as a clearing account that receives certified real estate appraisers' annual registry fees as mandated by the Federal Financial Institutions Examination Council (FFIEC). States are required to collect a \$40 annual fee from certified real estate appraisers and transfer it to FFIEC. Revenues are from annual fees collected from certified real estate appraisers. Expenditures include transfers of collected fees to FFIEC for listing of the state's certified appraisers on a national registry.

**Real Estate Education
Fund
(trust fund)**

**Sections 467-11 and
467-19, HRS**

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$754	\$394	\$1,218	\$818	\$1,601
Revenues	86	1,345	158	1,395	132
Interest	4	11	13	15	82
Expenditures	(450)	(532)	(571)	(627)	(573)
Transfers	0	0	0	0	0
Ending Balance	\$394	\$1,218	\$818	\$1,601	\$1,242
Encumbrances	\$49	\$1	\$31	\$3	\$17

This fund continues to serve the purpose for which it was created and meets the criteria for a trust fund. Statutorily established in 1967, the fund is used to finance the Real Estate Commission's educational programs. Revenues come from contributions made by licensees at the issuance of a new license and each renewal, as well as from interest on investments. Expenditures support a comprehensive education and research program for the benefit of both licensees and the public.

The department reported that the Real Estate Education Fund receives revenue from licensees when they initially apply and when they must renew their license. Licensees must renew their license by December 31 in even-numbered years. Thus, the revenue will fluctuate between renewal and non-renewal years. The department noted that expenditures have increased as the Commission procures for new projects including an update to the salesperson curriculum, development of workshops, and attends neighbor island outreach.

**Real Estate Recovery
Fund
(trust fund)**

Section 467-16, HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$711	\$740	\$815	\$876	\$911
Revenues	79	121	132	128	68
Interest	0	0	0	0	0
Expenditures	(50)	(46)	(71)	(93)	(90)
Transfers	0	0	0	0	0
Ending Balance	\$740	\$815	\$876	\$911	\$889
Encumbrances	\$0	\$0	\$6	\$1	\$0

This fund continues to serve the purpose for which it was created and meets the criteria for a trust fund. Statutorily established in 1967, the fund is used by the Real Estate Commission to compensate persons aggrieved by fraud, misrepresentation, or deceit by a real estate licensee. Revenues are from a one-time contribution of \$84 made by each new real estate licensee. Expenditures consist of payments for claims, legal services, and audits, as well as processing, administration, and research and development costs.

We note that the department reported, from September 1, 2019 to August 31, 2020, revenues from the one-time contribution made by new real estate licensees were reduced by 50 percent (to \$42).

**Restitution Fund
(trust fund)**

Section 487-14(d), HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$84	\$91	\$16	\$1	\$4
Revenues	16	23	23	4	50
Interest	0	0	0	0	0
Expenditures	(9)	(98)	(38)	(1)	(53)
Transfers	0	0	0	0	0
Ending Balance	\$91	\$16	\$1	\$4	\$1
Encumbrances	\$0	\$0	\$0	\$0	\$0

This fund meets the criteria of a trust fund and continues to serve the purpose for which it was originally established. Statutorily established in 1991, the fund is used as a temporary holding account for moneys received or recovered by the DCCA's Office of Consumer Protection from defendants who are required by an agreement or court order to pay restitution to injured consumers. Revenues are from restitution payments. Expenditures include disbursements to consumers injured by unfair or deceptive acts of practices in trade or commerce.

***Service Contract
Provider's Financial
Security Deposit
(trust account)***

***Administratively
established***

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$67	\$50	\$50	\$50	\$50
Revenues	0	0	0	0	0
Interest	0	0	0	0	0
Expenditures	(17)	0	0	0	0
Transfers	0	0	0	0	0
Ending Balance	\$50	\$50	\$50	\$50	\$50
Encumbrances	\$0	\$0	\$0	\$0	\$0

This account does not meet all the criteria of a trust account because it functions more like a trust fund, but continues to serve the purpose for which it was originally established. This account functions more like the tenant security deposits trust funds we describe in Chapter 1, which invoke a fiduciary responsibility of state government to care for and use the assets held only for those designated to benefit from the funds.

Administratively established in 2003, the account is used to hold cash deposits made by service contract providers for all service contracts issued and in force in the State. Revenues are from cash deposits paid by service contract providers. Expenditures include refunds of security deposits. The account should be reclassified as a trust fund.

**State Certified Motor
Vehicle Arbitration
Fund
(trust fund)**

Section 481I-4(e), HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$124*	\$124	\$124	\$123	\$124
Revenues	3	4	3	4	4
Interest	0	0	0	0	0
Expenditures	(3)	(4)	(4)	(3)	(4)
Transfers	0	0	0	0	0
Ending Balance	\$124	\$124	\$123	\$124	\$124
Encumbrances	\$0	\$0	\$0	\$0	\$0

*FY2016 beginning balance does not agree to FY2015 ending balance in Report No. 15-12 due to rounding errors made in 2015.

This fund meets the criteria of a trust fund and continues to serve the purpose for which it was originally established. Statutorily established in 1996, the fund is used to administer the State Certified Arbitration Program by providing nominal compensation to independent arbitrators desiring compensation, reimbursing verified program and administrative costs, paying for the arbitration program's administrative expenses and costs associated with educating consumers, manufacturers, and third parties. Revenues are from filing fees paid by vehicle manufacturers and consumers. Expenditures include equipment costs, training expenses, and costs associated with educating consumers, manufacturers, and third parties.

**Trust Clearing Account
(trust account)****Administratively
established****Financial Data for Fiscal Years 2016 – 2020 (in thousands)**

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$1,810	\$1,150	\$1,897	\$1,429	\$1,949
Revenues	2,109	2,117	1,947	1,860	1,703
Interest	0	0	0	0	0
Expenditures	(2,769)	(1,370)	(2,415)	(1,340)	(1,513)
Transfers	0	0	0	0	0
Ending Balance	\$1,150	\$1,897	\$1,429	\$1,949	\$2,139
Encumbrances	\$10	\$22	\$44	\$0	\$69

This account meets the criteria of a trust account and continues to serve the purpose for which it was originally established. Administratively established in 1976, the account temporarily holds deposits received from the Medical Inquiry and Conciliation Panels (MICP); deposits related to subdivisions, time shares, and condominiums; temporary deposits of fees collected from motor vehicle insurers; and temporary deposits of fines assessed by DCCA's Regulated Industries Complaint Office pending disposition. Revenues are from registration, application, and filing fees paid by parties involved in MICP claims; condominium and timeshare developers; subdividers; and motor vehicle insurers. Expenditures consist of MICP panel costs and administrative fees and consultant fees for review of subdivisions, timeshares, and condominium-related documents.

Chapter 3

Observations on the Department of Commerce and Consumer Affairs' Reporting and Accounting for Funds

As we reported in our *Study of the Transfer of Non-general Funds to the General Fund*, Report No. 12-04, special, revolving, and other types of non-general funds collectively represent about half of the State's operating budget – moneys that are not subject to the same level of legislative scrutiny as the general fund. Accurate and complete reporting of all funds, as required by law, would greatly improve the Legislature's oversight and control of these funds and provide increased budgetary flexibility. Fund reports are one of the primary means through which the Legislature tracks non-general funds. The reports are used to monitor fund balances and identify excess moneys for possible transfer to the general fund.

DCCA Did Not Report Non-General Funds as Required by Law

Section 37-47, HRS, requires departments to submit to the Legislature an annual report of each non-general fund account, including information such as the intended purpose of the fund, current program activities supported by the fund, and financial data. The Director of Finance annually issues a memorandum requesting all departments complete and submit Form 37-47, *Report on Non-General Fund Information*, to the Department of Budget and Finance for each of their non-general funds. The Department of Budget and Finance compiles a report of all non-general fund accounts and submits it to the Legislature prior to the start of each legislative session.

Section 37-52.5, HRS, requires the Judiciary and any department that administratively establishes a new fund or account to submit a report to the Legislature. The report must be filed within 30 working days of a fund or account's creation and should include a justification for the fund or account and identification of its sources of revenue. In addition, prior to the start of each legislative session, the law also requires each department to submit to the Legislature a listing of all administratively established funds or accounts along with a statement of their revenues, expenditures, encumbrances, and ending balances for each fund or account. This report is separate and distinct from the non-general fund report required under Section 37-47, HRS.

During our review of DCCA's non-general funds, we noted noncompliance with statutory requirements to report financial activity and balances, as required by Section 37-47, HRS, as well as fund information for administratively established funds and accounts under Section 37-52.5, HRS.

As shown in Exhibit 3.1, DCCA had non-general funds with balances totaling \$113,000 and administratively created non-general funds with balances totaling \$815,000 that were not reported to the 2020 Legislature as required by Sections 37-47 and 37-52.5, HRS, respectively.

Exhibit 3.1

DCCA Non-General Funds and Administratively Created Funds Not Reported to the Legislature

Fund Name	Fund Type	HRS 37-47 (Non- General)	FY2019 Ending Balance (rounded)	HRS 37-52.5 (Admin Created)	FY2019 Ending Balance (rounded)
Cable Television	Trust Fund			✓	\$815,000
Mortgage Foreclosure Dispute Resolution Fund	Special	✓	113,000		
Total			\$113,000		\$815,000

Source: Office of the Auditor

Other Funds DCCA Reported to the Legislature

Section 23-12, HRS, requires the Auditor to review all existing special funds, revolving funds, trust funds, and trust accounts every five years. To identify funds subject to this review, we consult a variety of sources, including our prior reviews, accounting reports from DAGS, and the department whose funds we are reviewing. Prior to conducting our analysis for the current review, DCCA confirmed that our preliminary list of funds and accounts was a complete list of its special funds, revolving funds, trust funds, and trust accounts.

DCCA subsequently identified two additional funds that are held outside of the State Treasury and managed by third-party administrators: (1) moneys from the Public Benefits Fee authorized under Section 269-121, HRS; and (2) moneys from a surcharge for telecommunications relay services for individuals with hearing or speech disabilities authorized under Section 269-16.6, HRS. DCCA reported both of these funds to the 2020 Legislature as non-general fund accounts. However, in both reports, DCCA failed to indicate the fund type (e.g., special, revolving, trust) for either account, noting only that these funds are held outside of the State Treasury.

In written responses to our questionnaires, DCCA provided additional information about these funds, including, among other things, the purpose of the fund, revenue sources, and expenditures. We report this information separate from the DCCA special funds, trust funds, and trust accounts in Chapter 2 given the unique fund characteristics described below.

Hawai'i Public Benefits Fee

Financial Data for Fiscal Years 2016 – 2020 (in thousands)*

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$47,515	\$32,336	\$25,221	\$16,677	\$12,225
Revenues	24,774	27,083	21,713	22,047	28,754
Interest	29	95	226	361	192
Expenditures	(39,982)	(34,293)	(30,483)	(26,860)	(30,818)
Transfers	0	0	0	0	0
Ending Balance	\$32,336	\$25,221	\$16,677	\$12,225	\$10,353
Encumbrances	\$0	\$0	\$0	\$0	\$0

*DCCA reported that Public Benefits Fee (PBF) moneys are held in an account with Bank of Hawai'i and are outside of the State Treasury. We could not verify the financial data as there is no corresponding account in FAMIS for these moneys.

In 2006, the Legislature authorized the transfer of the existing demand-side management (DSM) surcharge collected by the Hawaiian Electric Company and its affiliates (collectively HECO) to a third-party administrator under the oversight of PUC. The surcharge would be called the Public Benefits Fee (PBF) and the proceeds used to administer energy-efficiency and DSM programs and services.

PUC reported that the PBF program was established to support clean energy technology, demand response technology, energy use reduction, and DSM infrastructure, programs, and services, subject to PUC's review and approval. The State of Hawaii's energy efficiency and conservation initiatives are the primary activities serviced by this program.

Program revenues are from the PBF surcharge collections and from the Hawai'i Green Infrastructure Authority. PUC reported that all HECO residential and business customers pay into the PBF through a monthly surcharge on their electric bill, which, in turn, permits customers to participate in energy efficiency services offered by Hawai'i Energy, the third-party administrator.

Expenditures include the costs of Hawai'i Energy, including partnerships with local organizations to support smaller projects and/or pilot programs (such as the Ulupono Initiative).

**Telecommunications
Relay Services
Surcharge**

Financial Data for Fiscal Years 2016 – 2020 (in thousands)*					
	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$303	\$247	\$136	\$462	\$558
Revenues	687	615	1,025	945	861
Interest	0	1	3	7	4
Expenditures	(743)	(727)	(702)	(856)	(804)
Transfers	0	0	0	0	0
Ending Balance	\$247	\$136	\$462	\$558	\$619
Encumbrances	\$0	\$0	\$0	\$0	\$0

*DCCA reported that telecommunications relay services (TRS) surcharge moneys are held in accounts with the Bank of New York Mellon and Fidelity Investments and are outside of the State Treasury. We could not verify the financial data as there is no corresponding account in FAMIS for these moneys.

DCCA reported that moneys from the telecommunications relay services (TRS) surcharge are used to provide telecommunications services for hearing-impaired and speech-impaired individuals. Section 269-16.6, HRS, mandates PUC implement intrastate telecommunications relay services for the deaf, persons with hearing disabilities, and persons with speech disabilities. PUC has contracted with Sprint Communications Company LP to administer Hawai‘i’s TRS program.

Revenues are from a percentage of telecommunications carriers’ gross operating revenues from providing retail intrastate telecommunications services. Expenditures include payments to Sprint Communications Company LP for the administration of the TRS program.

Office of the Auditor's Comments on the Department of Commerce and Consumer Affairs' Response

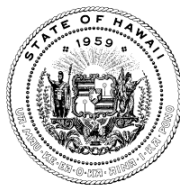
Comments on Agency Response

We transmitted to DCCA a draft of our review of its Special Funds, Revolving Funds, Trust Funds, and Trust Accounts on December 10, 2020. DCCA provided its written response to the draft report on December 17, 2020 (Attachment 1).

DCCA disagreed with our conclusion that the Commissioner's Education and Training Fund (CETF) meets the criteria for a special fund, rather than a trust fund, and should be reclassified as such. We reached a similar conclusion in 2015 that the CETF is not a fund in which designated persons or classes of persons have a vested beneficial interest or equitable ownership, nor was it created or established by a gift, grant, contribution, devise or bequest that limits the use of the fund to designated objects or purposes. We find DCCA's position to be unpersuasive and maintain our analysis of this fund was appropriate and correct based upon the information DCCA provided to us during the review process. It does not meet the criteria for a trust fund and should be reclassified as a special fund.

DCCA also disagreed with our conclusion that the Electric Vehicle Charging System Rebate Program fund was an inappropriately created special fund because it was administratively established after 2002. Section 37-52.3, HRS, which was effective June 30, 2002, reads, "[s]pecial funds shall be established only pursuant to an act of the legislature." DCCA's response does not address the unambiguous language in Section 37-52.3, HRS, or provide other information that supports or otherwise justifies amending our recommendation.

Lastly, DCCA disagreed with our conclusion that the Cable Television trust fund was not properly reported to the Legislature pursuant to Section 37-52.5, HRS, because the fund, according to DCCA, "is not a state fund," is maintained and managed by a private entity (Time Warner), and is held outside of the state treasury. However, we find none of these reasons persuasive. DCCA reported this fund to the Legislature in its *Report on Non-General Fund Information* and, in response to our fund questionnaire, indicated that expenditures from this fund must be authorized through an express Legislative appropriation and an order from the DCCA Director. We maintain that this fund should have been included on DCCA's report to the Legislature of the department's administratively established accounts and funds pursuant to Section 37-52.5, HRS.



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

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DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

December 18, 2020

Mr. Leslie H. Kondo
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Mr. Kondo:

Thank you for the opportunity to comment on the Draft Report entitled, *DRAFT 2020 Review of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts of the Department of Commerce and Consumer Affairs*. We have reviewed the report and respectfully provide the following comments:

Commissioner's Education and Training Fund ("CETF")

Auditor's comment: The fund continues to serve the purpose for which it was created, but it functions as, and meets the criteria for, a special fund and should be reclassified as such.

DCCA response: The Department of Commerce and Consumer Affairs ("DCCA") does not agree with the Auditor's comment that this fund should be reclassified. The DCCA Insurance Division is charged, among other things, with ensuring that Hawaii's citizens have insurance that is appropriate for their needs and fairly priced and that Hawaii's insurance industry is safe and sound. CETF's purpose is to provide for specialized education and training of insurance division personnel as well as consumer education. CETF is codified at Hawaii Revised Statutes ("HRS") § 431:2-214 as follows:

§431:2-214 The commissioner's education and training fund. (a) The commissioner may establish a separate fund designated as the commissioner's education and training fund.

(b) This fund may be used to compensate or reimburse staff and personnel of the insurance division for education and training. Upon approval by the commissioner, staff and personnel may be compensated or reimbursed for:

- (1) Actual travel expenses in amounts customary for these expenses;
- (2) A reasonable living expense allowance at a rate customary for these expenses;
- (3) Per diem compensation at a customary rate; and
- (4) Any fees or charges necessary to attend educational and training conferences, workshops, seminars, and any other event of this nature.

(c) Any person receiving reimbursement or compensation from the commissioner's education and training fund shall submit to the commissioner, for approval, a detailed account of all expenses and compensation necessarily incurred on account of any education and training for the insurance division.

(d) The commissioner's education and training fund may be used to pay the cost of consumer education and information, including publication of information, brochures, and consumer guides and costs related to conferences, workshops, seminars, and any other event of this nature which the commissioner sponsors or in which the commissioner or insurance division staff participates.

The legislative history for HRS § 431:2-214 clearly states that one of the reasons for establishing the CETF was for education and training of insurance division personnel, as reflected in the committee reports for SB No. 361. (See Senate Journal 1987, SCRep. 19, SCRep. 224, SCRep. 718). It is clear that the fund was not established as an accounting mechanism, nor a mere pass through for funds. Rather, CETF was specifically established for education and training of insurance division employees, as well as for the benefit of individuals specifically interested in insurance topics.

CETF should remain a trust fund, as the insurance division staff and Hawaii's insurance consumers, as CETF beneficiaries, have an interest in education and training in order to perform their duties competently and to make informed customer choices, respectively.

Mr. Leslie H. Kondo
December 18, 2020
Page 3

Electric Vehicle Charging System Rebate Program

Auditor's comment: This Fund does not meet the criteria of a special fund because it was inappropriately created after 2002.

DCCA response: DCCA does not concur. The Electrical Vehicle Charging System Rebate Program was established by Act 142, SLH 2019. The purpose of this Act was to create a program, administered by the Hawaii Public Utilities Commission ("PUC"), that offered rebates for the installation of new or the upgrade of existing electric vehicle charging systems. The Act appropriated \$150,000 for FY2020 and \$250,000 for FY2021. Per Section 3 of the Act, the funding was appropriated from the Energy Security Special Fund into the PUC Special Fund. As of December 2020, the PUC has received the cash transfers from the Department of Business Economic Development and Tourism ("DBEDT"), encumbered all funds, expended 85% of the 1st year's appropriation and is on track to expending total funds by 12/31/2021. The Public Benefits Fee Administrator is implementing the program on behalf of the PUC.

Observations on DCCA Reporting and Accounting for Funds

Auditor comment: DCCA did not report the Cable Television Trust Account and Mortgage Foreclosure Dispute Resolution Fund as administratively created funds.

DCCA Response: DCCA does not concur with this finding. The Cable Television Trust Account while included in the DCCA's Report on Non-general Fund Information submitted to Legislature, is not a state fund and maintained and managed by a private entity, Time Warner. All funds are held outside of the state treasury.

The Mortgage Foreclosure Dispute Resolution Fund was established pursuant to HRS 667-86 and is normally included in the Department's annual Non-General Fund reporting. The one-time omission of this fund from the 2019 report was an inadvertent error that has been corrected in 2020's report, which will be filed shortly.

Again, we appreciate the opportunity to comment on the draft report. Should you or your staff have additional questions regarding the subject of this draft report, please feel free to contact Dean Hazama, my Business Management Officer at 586-2844.

Sincerely,



CATHERINE P. AWAKUNI COLÓN
Director

CPAC:kt

