



Center for Board Certified Fiduciaries™ Working Paper

Where are the *Lay Fiduciaries* Who Have Control and Responsibility for More Than \$26 Trillion of US Investment Assets?

Allan Henriques, Kathleen McBride, David J. Bromelkamp, Trevor Merrill, and Tony A. Michael

The Center for Board Certified Fiduciaries™ (CBCF) is a Public Benefit Corporation founded and funded by leading fiduciary advocates. Its mission is to:

- *Provide the critical infrastructure to accelerate the development of exemplary fiduciaries*
- *Board certify fiduciary professionals in recognized areas of specialization*
- *Affiliate with leading universities to provide an executive education certificate in fiduciary leadership, stewardship and governance, and, over time, develop the curricula for the first Masters and Ph.D. programs with a concentration in fiduciary responsibility*
- *Conduct and publish research on fiduciary standards and associated best practices*
- *Foster procedures and best practices associated with the role of the Outsourced Fiduciary Officer (OFO)*
- *Provide expert advice to regulators and SROs on how to raise the quality of their published fiduciary standards*
- *Convene and host conferences and workshops for both professional and lay fiduciaries*

For more information, please go to <https://www.c-bcf.com/>

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Finding the Elusive Lay Fiduciary

No one knows exactly how many *Lay Fiduciaries*¹ exist, even though they're legally responsible for prudently managing trillions of dollars of investments.

And it's not an easy task to locate them.

In fact, many of them don't even discern their fiduciary stature or the legal liabilities they face.

Whether they recognize it or not, this eclectic group legally has decision-making authority, oversight and prudent investment management responsibilities for such diverse entities as our retirement plans, nonprofit organizations, health and welfare benefit plans, and various types of trusts and legal authority.

We entrust *Lay Fiduciaries* with our retirement plans and our gifts to our favorite charities, and they are in charge of our investments and contributions. And if you sponsor a retirement or health and welfare benefit plan for your employees—or serve as a board member or decision-maker for a nonprofit, then you're likely a *Lay Fiduciary*.

Typically, *Lay Fiduciaries* hold “real jobs” (for which they receive compensation) in addition to their “fiduciary jobs” (for which they may have little training and generally don't receive compensation).

Nonetheless, these “fiduciary jobs” in the United States are responsible for managing an estimated \$26.6 trillion of our investments.

All of these generally well-intentioned individuals have at least one thing in common – they're legally responsible for the prudent management of investments for the benefit of someone else.

Despite these legal responsibilities, there are few legal requirements for training them to do their “fiduciary job” – they're simply ***held to the highest standard under the law.***²

In many instances, they've never even been told that they are fiduciaries – or what that means.

Confusion Among the Ranks

In recent years, a growing number of these individuals have had an unpleasant—and avoidable—experience when learning about their fiduciary responsibilities and personal liabilities. They've been named as defendants in lawsuits by their aggrieved beneficiaries who've been harmed by their fiduciaries' actions, or inaction. Many of these lawsuits have resulted in settlements or judgements of millions of dollars to “make things right” for the beneficiaries.³

This “information gap” has led to some rather quirky “*Lay Fiduciary Facts of Life*”:

- For Retirement Plan Sponsors:
 - 49% don’t consider themselves fiduciaries⁴ – even though the law and regulations clearly state they are
 - 38% are concerned about fiduciary responsibilities⁵
 - 67% are asking advisors about litigation risks⁶
 - 76% are interested in the topic of fiduciary responsibilities⁷
- For Nonprofit Organizations:
 - “Reputation is everything”⁸
 - Only about half (47%) of nonprofit directors believe their fellow board members understand their obligations as directors, well or very well⁹
 - In the US, only 60% of respondents said they trust charities – and a whopping 27% said they don’t¹⁰

Current Insights

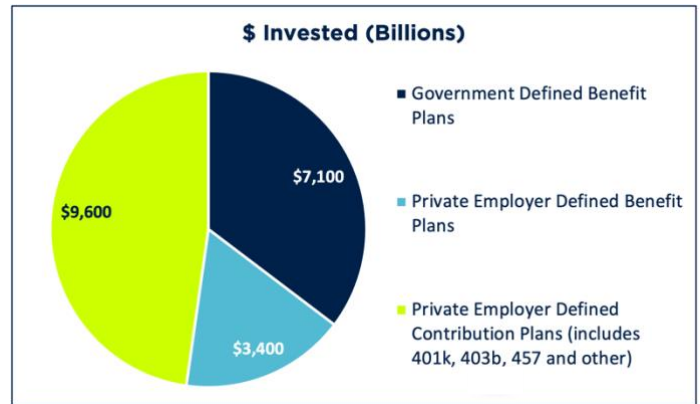
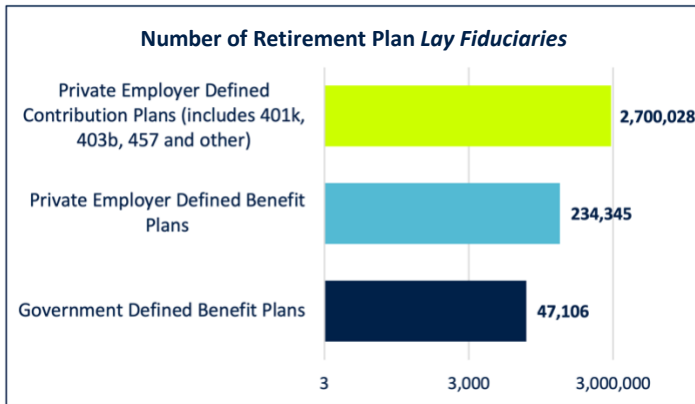
We can begin to get a fairly good idea of how many *lay fiduciaries* there are, and the types of organizations and amount of investments for which they are responsible from data collected by the Internal Revenue Service and the US Department of Labor in annually required “informational tax returns.”

These reported numbers are impressive, but it’s important to recognize that the reported numbers don’t tell the full story. For example, neither the Internal Revenue Service, the Department of Labor nor any other central data source appear to collect this information on such common estate planning entities created by attorneys for millions of Americans, including Living Trusts, Irrevocable Trusts, General Powers of Attorney and Health Care Powers of Attorney.

The Center for Board Certified Fiduciaries™ (CBCF™) continues to research the size and scope of the “*Lay Fiduciary Landscape*.” We plan to update this survey annually and post updated research at www.c-bcf.com where you will find additional resources for the lay and professional fiduciary. We welcome your comments, insights and data resources. If you have any related ideas or data you believe would be helpful to incorporate into this research, please contact Allan Henriques at allan@fiduciarypath.com or 916-276-2297.

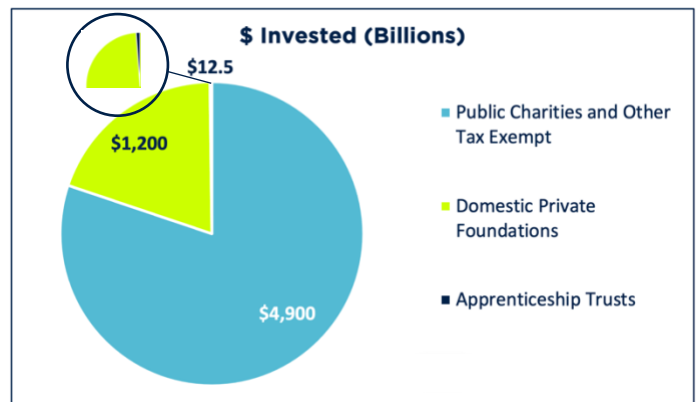
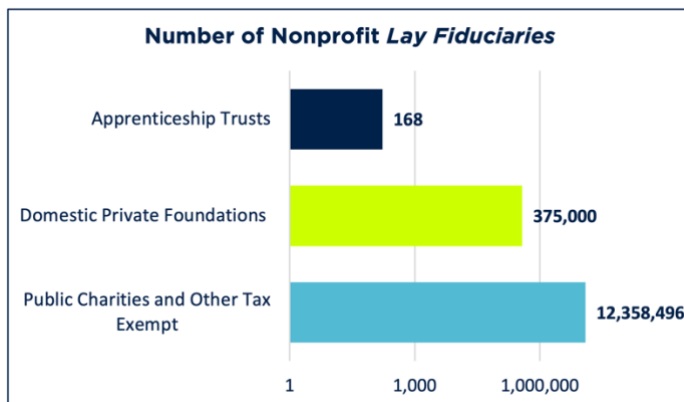
To help gain perspective, we’ve categorized *lay fiduciaries* into four groups: Retirement Plans, Nonprofit Organizations, Health and Welfare Benefit Plans, and Private Trusts.

Retirement Plan *Lay Fiduciaries*



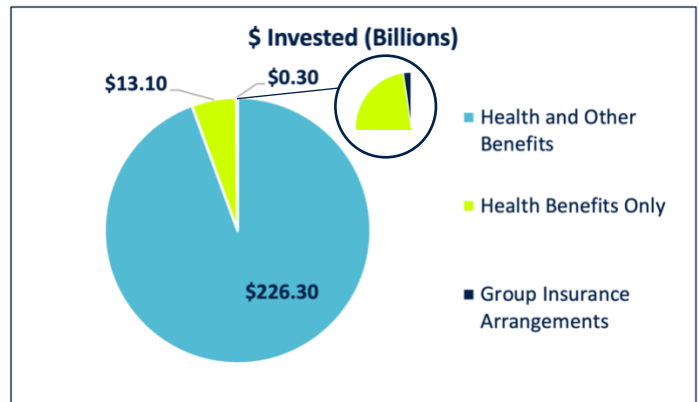
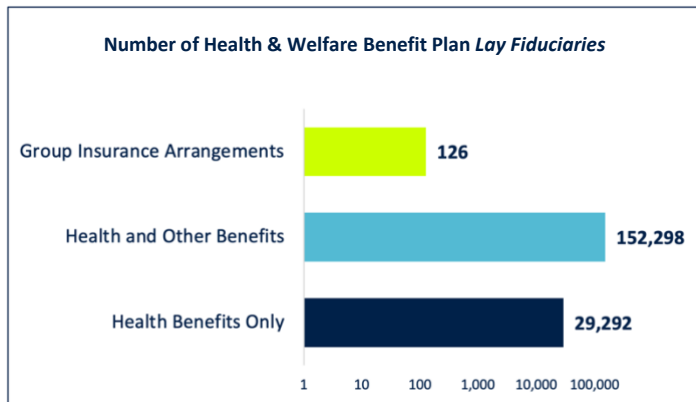
Type of Fiduciary Organization	Number of Organizations	Number of <i>Lay Fiduciaries</i>	Avg Fiduciaries Per Organization	\$ Invested (Billions)
Retirement Plans¹¹				
Government Defined Benefit Plans	5,234 ¹²	47,106 ¹³	9	\$7,100.0 ¹⁴
Private Employer Defined Benefit Plans	46,869 ¹⁵	234,345 ¹⁶	5	\$3,400.0 ¹⁷
Private Employer Defined Contribution Plans (includes 401k, 403b, 457 and other)	675,007 ¹⁸	2,700,028 ¹⁹	4	\$9,600.0 ²⁰
Total Retirement Plans	727,110	2,981,479	4	\$20,100.0

Nonprofit *Lay Fiduciaries*



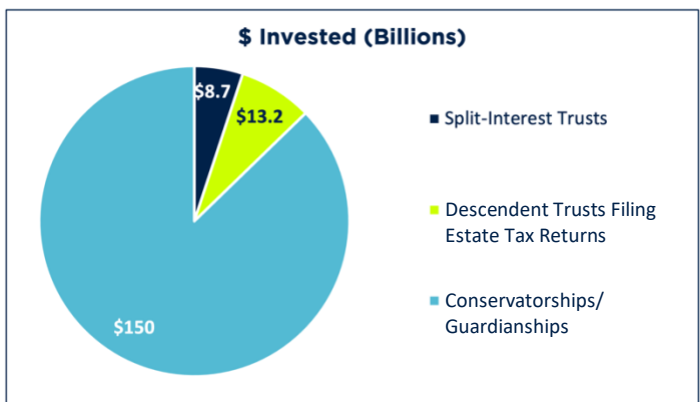
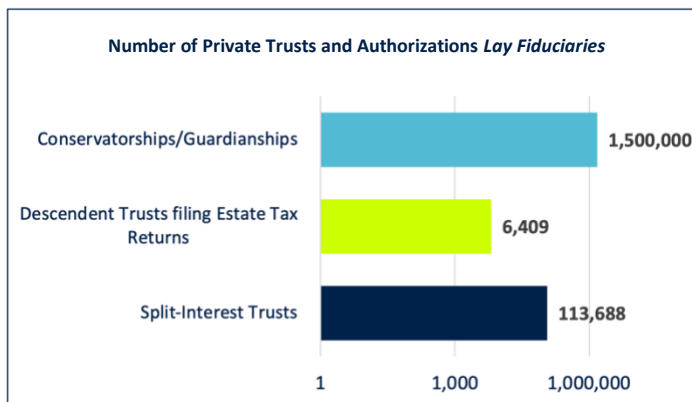
Type of Fiduciary Organization	Number of Organizations	Number of <i>Lay Fiduciaries</i>	Avg Fiduciaries Per Organization	\$ Invested (Billions)
Nonprofits				
Public Charities and Other Tax Exempt	1,544,812 ²¹	12,358,496 ²²	8	\$4,900.0 ²³
Domestic Private Foundations ²⁴	116,743	375,000	3	\$1,200.0
Apprenticeship Trusts	42 ²⁵	168 ²⁶	4	\$12.5 ²⁷
Total Nonprofits	1,661,597	12,733,664	8	\$6,112.5

Health and Welfare Benefit Plan *Lay Fiduciaries*



Type of Fiduciary Organization	Number of Organizations	Number of <i>Lay Fiduciaries</i>	Avg Fiduciaries Per Organization	\$ Invested (Billions)
Health & Welfare Plans²⁸				
Health Benefits Only	9,764	29,292	3	\$13.1
Health and Other Benefits	50,766	152,298	3	\$226.3
Group Insurance Arrangements	42	126	3	\$0.3
Health & Welfare Plans	60,572	181,716	3	\$239.7

Private Trusts and Authorizations *Lay Fiduciaries*



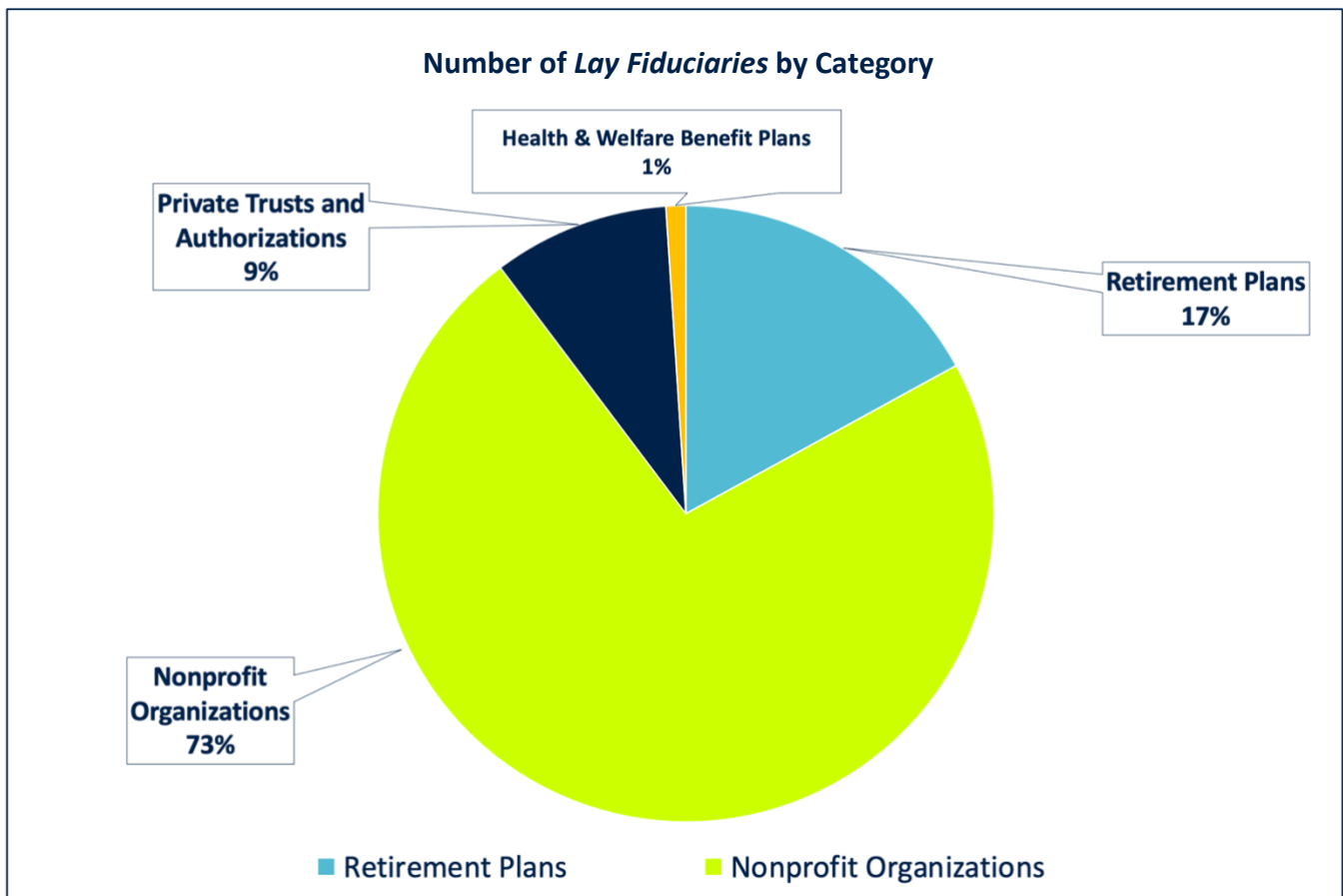
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Private Trusts and Authorizations²⁹				
Split-Interest Trusts ³⁰	113,688	113,688	1	\$8.7
Descendent Trusts filing Estate Tax Returns ³¹	6,409	6,409	1	\$13.2
Conservatorships/Guardianships ³²	1,500,000	1,500,000	1	\$150.0
Total Private Trusts and Authorizations	1,620,097	1,620,097	1	\$171.9

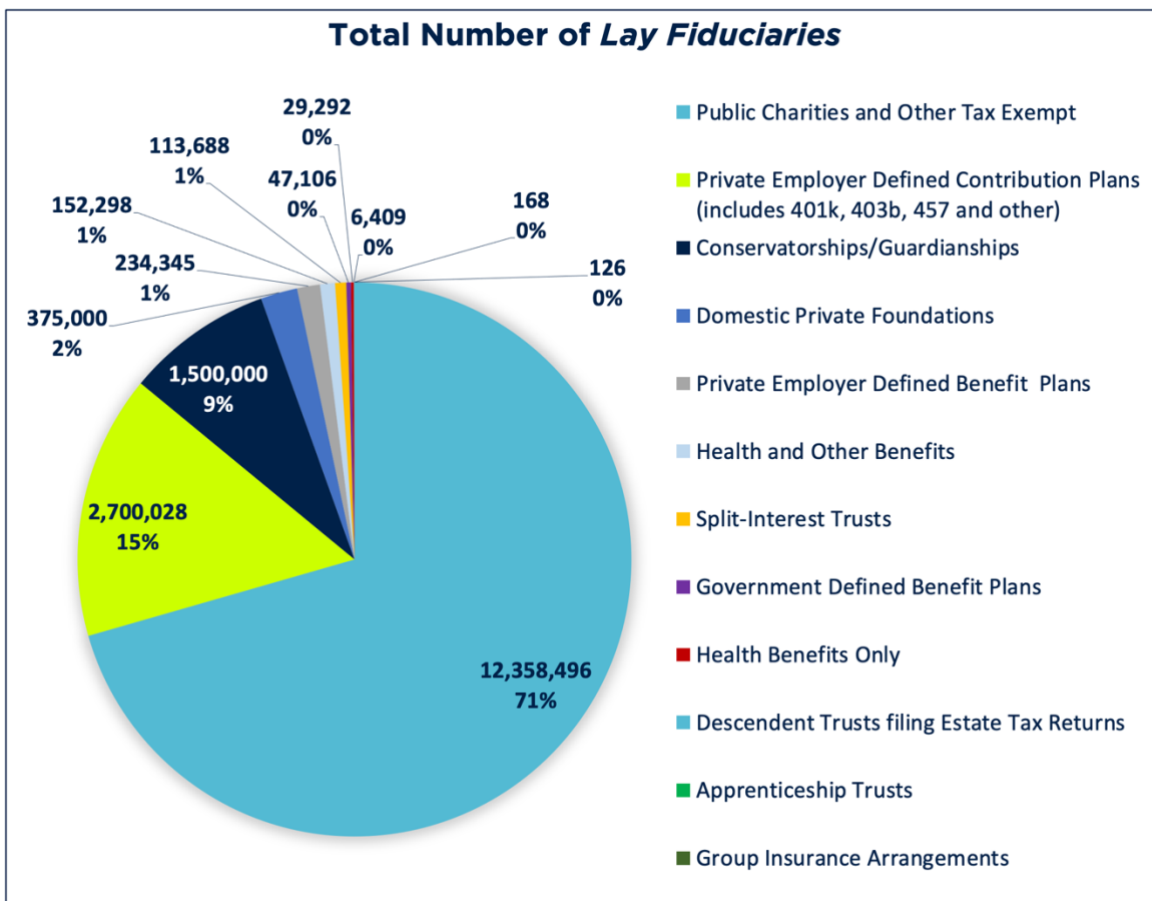
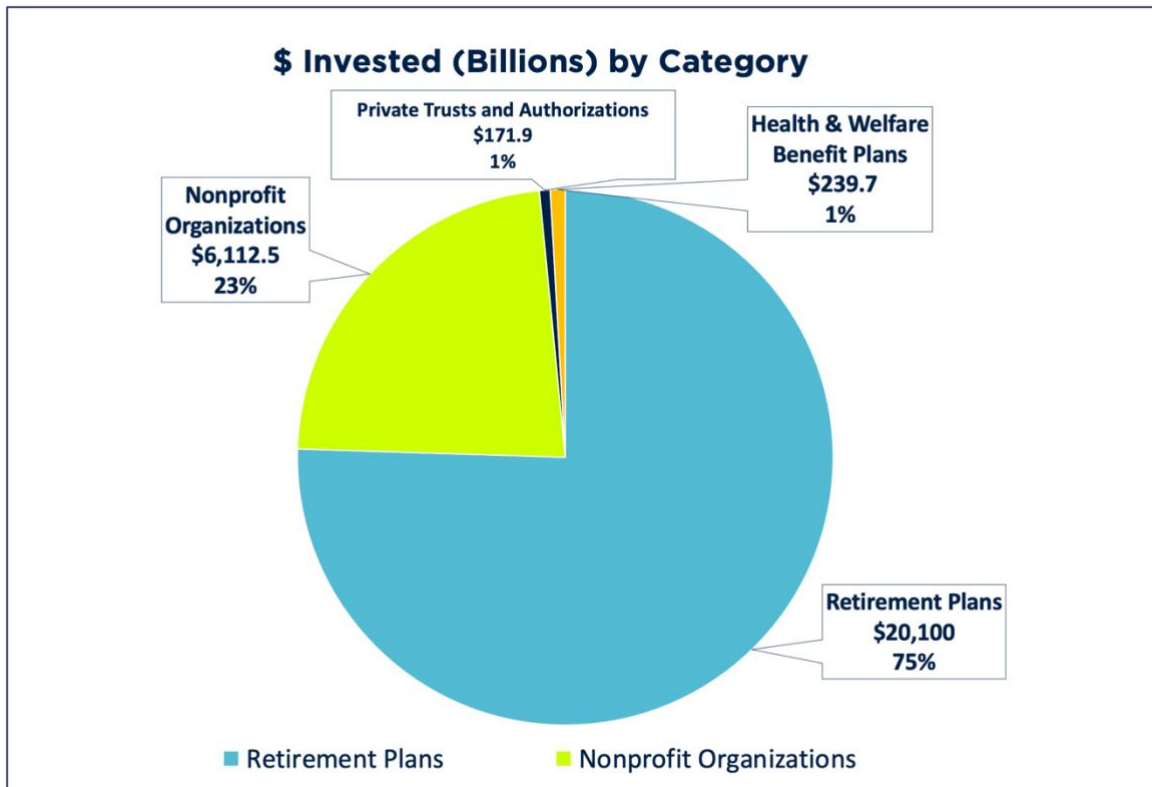
The Big Picture

Add up the total number of lay fiduciaries from the various types of fiduciary organizations, and you will see that the number of *lay fiduciaries* is staggeringly large—a little less than the number of people living in New York State.³³

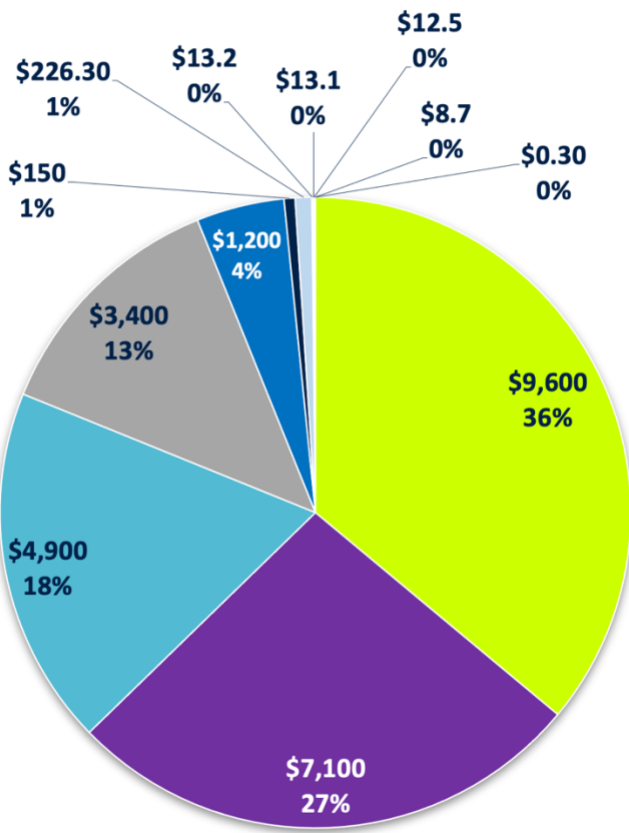
This “Big Picture” also illustrates some interesting insights:

- Retirement Plan *Lay Fiduciaries* are approximately 17% of the *Lay Fiduciary* universe, yet are responsible for approximately 75% of the investments;
- Nonprofit *Lay Fiduciaries* comprise approximately 73% of the *Lay Fiduciary* universe and are responsible for approximately 23% of the investments;
- Health and Welfare Benefit Plan *Lay Fiduciaries* comprise approximately 1% of the *Lay Fiduciary* universe and are responsible for 1% of the investments; and
- Private Trust *Lay Fiduciaries* are approximately 9% of the *Lay Fiduciary* universe but are responsible for less than 1% of the investments.





\$ Invested (Billions) by Type of Organization



- Private Employer Defined Contribution Plans (includes 401k, 403b, 457 and other)
- Government Defined Benefit Plans
- Public Charities and Other Tax Exempt
- Private Employer Defined Benefit Plans
- Domestic Private Foundations
- Conservatorships/Guardianships
- Health and Other Benefits
- Descendent Trusts filing Estate Tax Returns
- Health Benefits Only
- Apprenticeship Trusts
- Split-Interest Trusts
- Group Insurance Arrangements

Lay Fiduciaries At a Glance

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Totals	4,069,376	17,516,956	4	\$26,624.1

So, how many *Lay Fiduciaries* are out there? Some authorities quote “at least 8 million.” From this conservative analysis, if you say “There are at least 17.5 million *Lay Fiduciaries* who are responsible for about \$26.6 trillion” you’ve got plenty of data to back you up.

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Endnotes:

¹ A “fiduciary” is a person or organization who is responsible for managing money or property for another person or organization. See <https://dictionary.cambridge.org/dictionary/english/fiduciary> A “lay fiduciary” is a non-professional fiduciary. Good examples include an employee serving on an investment committee for the company’s 401k plan, a family member serving as an executor of an estate, a nonprofit trustee, board member or decision-maker, or a church member helping out with a faith-based foundation. A “professional fiduciary” is in the business of providing fiduciary services. Good examples include a registered investment advisor, a trust company, or money management firm.

² <https://definitions.uslegal.com/b/breach-of-fiduciary-duty> ,

³ For recent summaries of court decisions and settlements, see <https://www.jacksonlewis.com/sites/default/files/docs/Chirinos-Rachal-Rumeld-Hansen.pdf>

⁴ “Inside the Minds of Plan Sponsors,” Alliance Bernstein, 2017.

⁵ “Plan Sponsor Attitudes Study,” Fidelity. 2016.

⁶ Fi360 webinar poll, November 29, 2017. See www.fi360.com/resources/webinars/regulators-the-courts-and-the-fiduciary-standard-whats-happened-whats-happening

⁷ “2019 RPRS Plan Sponsor Survey,” Xponential Growth Solutions, 2019.

⁸ “How Nonprofit Organizations Use Reputational Risk Management,” MIT Sloan Management Review, 2014.

⁹ “2015 Survey of Boards of Directors of Nonprofit Organizations,” Stanford Graduate School of Business.

¹⁰ Gallup and Wellcome Trust, June 2019.

¹¹ This data does not include IRA’s (an estimated \$11 trillion as of 2017). Source: The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2017, page 12. https://www.ici.org/pdf/20_ppr_dcplan_profile_401k.pdf

¹² This number reflects the “Number of Locally Administered Employee Retirement Systems by State, Fiscal Year 2017” as reported by the Urban Institute, plus the US Federal Employee Retirement System (FERS) and US Civil Service Retirement System (CSRS). See <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/projects/state-and-local-backgrounders/state-and-local-government-pensions>

¹³ This number is an estimate based on the National Association of State Retirement Administrator’s survey which concluded “the median number (of public retirement system board members) is nine” and the average number was 9.66 board members. See <https://www.nasra.org/governance>

¹⁴ Investment Company Institute Quarterly Retirement Market Data for Fourth Quarter 2020, https://www.ici.org/research/stats/retirement/ret_20_q4

¹⁵ Employee Benefits Security Administration (EBSA), US Department of Labor, Private Pension Plan Bulletin Historical Tables and Graphs 1975-2018 (January 2021), Table E1.
<https://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/private-pension-plan-bulletin-historical-tables-and-graphs.pdf>

¹⁶ This number is an estimate based on informal industry survey data showing an average of approximately five board and/or investment committee members.

¹⁷ Investment Company Institute Quarterly Retirement Market Data for Fourth Quarter 2020,
https://www.ici.org/research/stats/retirement/ret_20_q4

¹⁸ Employee Benefits Security Administration (EBSA), US Department of Labor, Private Pension Plan Bulletin Historical Tables and Graphs 1975-2018 (January 2021), Table E1.
<https://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/private-pension-plan-bulletin-historical-tables-and-graphs.pdf>

¹⁹ This number is an estimate based on informal industry survey data showing an average of approximately four board and/or investment committee members.

²⁰ Investment Company Institute Quarterly Retirement Market Data for Fourth Quarter 2020,
https://www.ici.org/research/stats/retirement/ret_20_q4

²¹ Urban Institute, National Center for Charitable Statistics, “The Nonprofit Sector in Brief 2019” June 2020.
<https://nccs.urban.org/publication/nonprofit-sector-brief-2019#the-nonprofit-sector-in-brief-2019> Approximately two-thirds of these organizations are public charities. Note: This number is the total nonprofits registered with the Internal Revenue Service (IRS) in 2016. Religious congregations and organizations with less than \$5,000 annual gross receipts are not required to register with IRS, although some do.

²² This number is an estimate, based on informal industry surveys and may be low. Based on Form 990’s filed annually with the IRS, the average number of voting directors for nonprofit organizations from 2010-2017 was 20. During the same period, the average number of voting directors for 501c3 organizations (representing about 74% of the total nonprofit organization filings) was 13. See “Governance Data Set” at https://www.open990.org/dataset/nonprofit_governance/

²³ “The Risk, Reward and Asset Allocation of Nonprofit Endowment Funds” by Andrew W. Lo, Egor Matveyev and Stefan Zeume, MIT Sloan School of Management Working Paper, Last Revised March 2020.

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3560240 This paper documents the 311,222 organizations that have endowment funds (approximately 1 in 9 of the organizations filing Forms 990, 990-EZ or 990-N with IRS in 2016).

²⁴ FoundationMark, a private company that continuously tracks Form 990-PF data filed with IRS, and provides private foundation trustees with free reports on their foundation’s performance including comparisons to public market indices and a peer star rating system. <https://www.foundationmark.com/#/peergroup> Invested amount is FoundationMark’s estimate as of December 31, 2020, based on its proprietary formula incorporating IRS-reported data.

²⁵ US Department of Labor collects data from 25 federally-administered state apprenticeship programs, 16 federally-recognized State Apprenticeship Agencies and the US Military Apprenticeship Program. See <https://www.dol.gov/agencies/eta/apprenticeship/about/statistics>

²⁶ This is an estimate based on informal inquiries that show an average of four voting trustees per apprenticeship trust.

²⁷ This is an estimate based on an average annual cost per apprenticeship trainee of \$50,000 for an average of 250,000 trainees. See page 8, Federal Apprenticeship Data at <https://www.dol.gov/agencies/eta/apprenticeship/about/statistics>

²⁸ Employee Benefits Security Administration (EBSA), US Department of Labor, Group Health Plans Report “Abstract of 2018 Form 5500 Annual Reports, Reflecting Statistical Year Filings, Data Extracted on 5/5/2020,” dated January 2021. See <https://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/annual-report-on-self-insured-group-health-plans-2021-appendix-a.pdf>. The number of *lay fiduciaries* and average number of *lay fiduciaries* is an estimate based on informal industry survey data showing an average of approximately three board members per plan.

²⁹ Data on Revocable “Living” Trusts, Irrevocable Trusts, General Powers of Attorney and Health Care Powers of Attorney, common estate planning tools created by attorneys for millions of Americans, are not included. Neither IRS, DOL or any other apparent central repository apparently collect information on these types of estate planning entities.

³⁰ Split-Interest Trusts make distributions to both charities and noncharitable beneficiaries. IRS divides them into four categories: (1) Charitable Remainder Annuity Trusts, (2) Charitable Remainder Unitrusts, (3) Charitable Lead Trusts and (4) Pooled Income Funds. IRS does not collect information on the number of trustees, so this analysis assumes one trustee per trust. This data is for Filing Year 2012. See <https://www.irs.gov/pub/irs-soi/12splitinteresttrustonesheet.pdf>

³¹ US Estate Tax Returns must be filed for Wealthy Decedents (\$11.8 million or greater estate value as of 2018). IRS does not collect information on the number of trustees, so this analysis assumes one trustee per trust. See <https://www.irs.gov/pub/irs-pdf/p5332.pdf>

³² IRS does not collect information on Guardianships or Conservatorships. The number of these types of relationships is a “best guess of 1.5 million” but data are scant, and estimates range from 1 million to 3 million type of arrangements during any year in the US. This report assumes one trustee per such arrangement and average investments of \$100,000.

“Choosing Home for Someone Else: Guardian Decisions on Long-Term Services and Supports,” American Association of Retired People (AARP) 2013. See

https://www.aarp.org/content/dam/aarp/research/public_policy_institute/cons_prot/2013/guardian-decisions-on-ltss-report-AARP-ppi-cons-prot.pdf

³³ See https://simple.wikipedia.org/wiki/List_of_U.S._states_by_population