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Fidelity Investments faces fresh lawsuit over float income

By: [Robert Steyer](#)

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Participants from three more 401(k) plans have sued Fidelity Investments, alleging the company violated the Employee Retirement Income Securities Act through its use of float income, according to the lawsuit that was filed Thursday in the U.S. District Court in Boston.

“Fidelity breached its fiduciary duties and engaged in or caused the plans to engage in prohibited transactions involving plan assets, by using float income to pay its operating expenses and by failing to distribute float income solely for the interest of the plans,” the lawsuit said.

The lawsuit defines float income as “the interest earned when contributions and disbursement are held temporarily in overnight accounts or disbursement accounts.”

“Our practices are in compliance with ERISA and DOL guidelines,” Jennifer Engle, a Fidelity spokeswoman, responded via e-mail. “We believe that the practices described in the lawsuit are consistent with the law and fair to all parties and that we provide valuable services to 401(k) clients for whom Fidelity serves as a record keeper and trustee.”

The suit was filed by participants in 401(k) plans from Bank of America, EMC Corp. and Safety Insurance Co., and it contains similar allegations to another suit, also filed in the Boston federal court, by current or former participants of plans from Hewlett-Packard Co., Delta Air Lines Inc. and Avanade Inc., a subsidiary of Accenture.

Both float-income suits refer extensively to a March 2012 opinion of a judge in U.S. District Court in Kansas City, Mo., in a lawsuit by plan participants against ABB Inc., Cary, N.C., and Fidelity. The judge ruled that Fidelity had “breached its fiduciary duties” in the use of float income, and ordered Fidelity to pay the plan \$1.7 million. Fidelity is appealing the decision.

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