

NetSpend Settles FTC Charges, Resolving Allegations that it Deceived Consumers over Access to Prepaid Funds

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Last week the FTC [announced](#) that it had reached a settlement with NetSpend over allegations that NetSpend deceived consumers by promising “immediate access” with “guaranteed approval” to money loaded on its general purpose reloadable cards. Approved 2-1 with a vote by then-Commissioner Ramirez before her resignation, [the order](#) prohibits NetSpend from making misrepresentations about the length of time or conditions necessary before its prepaid products will be ready for use, the comparative benefits of its prepaid products to debit cards and other payment methods, and the protections consumers have in the event of account errors. The order also requires NetSpend to pay \$53 million in monetary relief and to provide notices to third-party advertisers directing them to discontinue any claims stating that NetSpend’s cards “provide immediate or instant access to funds, are ready to use today, or provide guaranteed approval.”

Initially filed in November 2016, the complaint alleged that NetSpend targets the “unbanked” or “underbanked,” as well as low-income and Spanish-speaking consumers, and deceptively represents that NetSpend cards will be ready for use immediately without any approval process. The complaint suggests that because, “in all cases consumers must contact NetSpend and provide personal identification information to activate the card” (*e.g.*, name, address, birthday and SSN), the claims of “immediate access” are misleading and create false expectations for consumers. The complaint further alleges that NetSpend did not always activate consumer accounts even though consumers sent the requested information and that NetSpend placed blocks on card accounts and made it difficult for consumers to resolve the blocks through poor customer service.

In [a dissenting statement](#), Acting Chair Ohlhausen raised two primary objections. First, Ohlhausen argues that the majority fails to consider the phrase “immediate access” in context, which describes the benefits of NetSpend cards as a direct deposit vehicle that could provide access to funds quicker than other forms of deposits. Ohlhausen reasons that, when considered in context, consumers would understand the claim “immediate access” to mean access to funds on the date when the payer made funds available for transfer to the account, not necessarily the day the consumer opens the account. Second, Ohlhausen asserts that, even assuming the claims were deceptive, the \$53 million monetary relief “is not sufficiently related to that claim” because there was insufficient evidence to conclude that consumers abandoned funds because of NetSpend’s allegedly deceptive advertising.

Commissioner McSweeney also issued [a statement](#) that responded to the Acting Chair’s arguments, noting that “[t]hese claims were not limited to situations involving direct deposit” and that “[m]any NetSpend card users load funds onto their cards at the time of purchase or otherwise have funds

deposited before activation.” McSweeney also noted that some consumers allegedly never received their funds even after they provided the information requested by NetSpend to verify their identity.

The case is notable both substantively – as one of few cases addressing representations for prepaid access cards, and procedurally – since it could not be entered if the vote took place today given the conflicting views of the two current Commissioners. (The settlement announcement was delayed because Commissioner McSweeney did not vote to support the settlement until March 8, about a month after then-Commissioner Ramirez had voted in favor of the settlement.)