Consumer Protection, the CFPB, and Prison: How Jail Sentences Arose Out of Civil Consumer Financial Protection Matters

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THE CONSUMER FINANCIAL Protection Bureau (CFPB) has taken an aggressive approach to regulating the financial services industry, for example by communicating compliance expectations through enforcement actions, rather than through rulemaking and public notice and comment. The CFPB's mission is to regulate the offering and provision of consumer financial products and services under federal consumer financial laws so that consumers may access financial products in markets that are fair, transparent, and competitive. To date, the CFPB has obtained $12 billion of relief for more than 27 million consumers.

In addition, as a federal banking agency, the CFPB has enhanced the overall ability of government to investigate banks and financial services firms through robust partnerships with the Department of Justice. The CFPB—much like the Federal Trade Commission—coordinates investigations and enforcement actions with criminal enforcement authorities in instances of intentional fraud. During the first six years of existence, the CFPB has actively enforced the Dodd-Frank Act, using common law approaches that mimic the elements of a charge under the Racketeer Influenced and Corrupt Organizations Act (RICO) to bolster CFPB's attractiveness to the criminal enforcers as an effective scout for potential prosecutions.

The CFPB-DOJ Framework

In the framework of CFPB-DOJ coordination, the CFPB differs from many agencies in the executive branch of government in one critical respect: it is not required to refer violations of its enabling statute to the DOJ for enforcement proceedings in the courts. The Dodd-Frank Act confers the CFPB with independent litigating authority.[1] Title X of the Dodd-Frank Act (Consumer Financial Protection Act or CFP Act) states that "the [CFPB] may . . . commence a civil action" against any person that violates any federal consumer financial law. The CFPB may seek "to impose a civil penalty" or "seek all appropriate legal and equitable relief including a permanent or temporary injunction as permitted by law."[2]

The CFP Act also permits the CFPB to "act in its own name and through its own attorneys in enforcing any provision of this title, rules thereunder, or any other law or regulation, or in any action, suit, or proceeding to which the [CFPB] is a party."[3] The CFPB's enforcement power is limited to civil actions; it is required by law to make criminal referrals to the Attorney General of the United States where appropriate.[4]

This authorizing language is permissive and it begs several questions. For example, what type of conduct "may constitute" a criminal violation in the CFPB's opinion? Under what circumstances "may" the Attorney General commence criminal proceedings based on the evidence provided by the CFPB? Notably, although the CFP Act requires that criminal matters be referred, the imprecise statutory language creates discretion by the CFPB (not the DOJ) to determine when the facts pertaining to a regulated entity "may constitute" evidence of criminal activity, even though the CFPB lacks authority to engage in criminal prosecutions.

How do the CFPB and the DOJ manage this predicament? As explained further below, the CFPB actively seeks civil-criminal partnership opportunities and develops expertise in criminal law standards. The CFPB's recruitment and hiring of former criminal prosecutors have facilitated its ability quickly to construct the CFPB's procedures for parallel criminal-civil proceedings.

Although the CFPB is a bank regulator, the modus operandi of the CFPB's Enforcement division bear greater similarity in some respects to that of a law enforcement agency than that of a bank regulatory enforcement agency. The CFPB—well aware of myriad sections within the DOJ tasked with consumer financial protection law—took steps to partner with those divisions when the CFPB opened its doors.

Moreover, the trial attorneys in the CFPB's in-house litigation department (the Office of Enforcement) are responsible for investigations (whether standalone or jointly with

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other agencies) and civil enforcement actions on behalf of the CFPB when actions arise out of those investigations. At the CFPB, the attorneys who work on the investigation of a matter also are involved in internal deliberations as to whether to commence litigation, filing and litigating public actions, and negotiating resolutions of that matter. At least for trial attorneys who love opportunities to litigate, the CFPB's internal governance structure is set up to incentivize attorneys who work on the CFPB investigation to have a vested interest in determining that a matter is appropriate for CFPB enforcement action.

Federal law also confers on the DOJ civil or criminal enforcement jurisdiction over a variety of consumer financial protection matters. The DOJ divisions responsible for these matters include:

- the Civil Division's Consumer Protection Branch;
- the Civil Rights Division's Housing and Civil Enforcement section;
- the Civil Rights Division's section enforcing the Servicemembers Civil Relief Act; and
- the Offices of the U.S. Attorneys (USAO) in the 94 districts in the United States.

The CFPB Enforcement protocols ensure the CFPB's ability to work closely with each of these DOJ entities, and they establish a responsibility of the CFPB to coordinate effectively with them. To execute this responsibility, the DOJ and the CFPB entered into a Memorandum of Understanding (MOU) creating a framework for cooperation.[5] The framework addresses information sharing, joint investigations and coordination, and referrals and notifications between the agencies. Under the MOU, a referral to the DOJ does not affect the CFPB's authority to pursue its own supervisory or enforcement action.

The agencies have also agreed that they will coordinate their efforts to avoid unnecessarily duplicative actions, particularly where the CFPB's authority overlaps with or is similar to the DOJ's authority (e.g., discriminatory lending practices, consumer financial protections for military members). The agencies have also agreed to notify each other at key stages of their enforcement work, such as the opening of an investigation or the filing of a lawsuit.

Furthermore, these efforts are often coordinated through Financial Fraud Enforcement Task Forces (FFETFs). President Obama established FFETFs by executive order "to investigate and prosecute significant financial crimes and other violations relating to the current financial crisis and economic recovery efforts, recover the proceeds of such crimes and violations, and ensure just and effective punishment of those who perpetrate financial crimes and violations . . . ."[6] FFETFs include representatives of all Departments and numerous state and local law enforcement agencies. Financial fraud coordinators are designated in every USAO office both to coordinate enforcement efforts and to facilitate the prosecution of financial crimes. The CFPB is a member of the FFETF and co-chairs the FFETF's Non-Discrimination working group.[7]

There is a similar interagency cooperation agreement between the FTC and the CFPB.[8] The interagency agreement outlines the working relationship between the two agencies under the terms of the CFP Act, and is designed to coordinate efforts to protect consumers and avoid duplication of federal law enforcement and regulatory efforts in the same way as the CFPB-DOJ MOU.

The FTC-DOJ Framework

A similar relationship exists between the FTC and the DOJ. Their authority overlaps, but each also has exclusive authority over certain conduct. While the DOJ and FTC share authority to enforce federal antitrust statutes, each agency typically takes the lead in reviewing mergers within certain industries. Again, although there may be some overlap, the DOJ and the FTC tend to allocate merger reviews according to their respective expertise. For example, the DOJ typically investigates mergers in the financial services, telecommunications, and agricultural industries; the FTC typically investigates mergers in the defense, pharmaceutical, and retail industries.

Only the DOJ has the power to seek criminal sanctions, while the FTC may refer matters for criminal enforcement. While the DOJ has exclusive authority to enforce the Sherman Act, the FTC can regulate some of the same conduct in a civil action. The FTC regulates "unfair methods of competition . . . and unfair or deceptive acts or practices."[9] The FTC also enforces consumer protection laws, such as the Fair Credit Reporting Act.

The DOJ and the FTC can seek similar remedies through their different authorities. The FTC may start with an administrative proceeding and then proceed to a complaint when a party is "using an unfair method of competition or unfair or deceptive act or practice."[10] If successful, the FTC may obtain a cease-and-desist order from an administrative law judge, which can then be enforced in federal court. The FTC may also proceed directly to federal court to seek injunctions. The DOJ proceeds directly to federal district court to seek civil injunctions or criminal prosecutions.

The relationship between the FTC and the DOJ is more fully defined in the DOJ's Antitrust Division Manual.[11] The Manual sets forth procedures for coordination of investigations, criminal referrals, and information sharing with the DOJ, state attorneys general, foreign governments, international organizations, and executive branch Agencies with international responsibilities.

Recent Coordination

Against this backdrop, recent public events demonstrate robust coordination between the CFPB and criminal authorities on consumer financial investigations. On approximately February 8, 2016, a grand jury sitting in the Southern District of New York indicted Scott Tucker and Timothy Muir for RICO conspiracy to collect unlawful debts; participating in a RICO enterprise collecting unlawful debts; and false Truth in Lending Act (TILA) disclosures.[12] On approximately February 9, 2016, a grand jury in the Southern District of New York indicted Richard Moseley, Sr., for a similar (though not identical) set of alleged crimes: RICO conspiracy to collect unlawful debts; participating in a RICO enterprise collecting unlawful debts; conspiracy to commit wire fraud; wire fraud; and false TILA disclosures.[13] On approximately April 7, 2016, a grand jury in the Eastern District of Pennsylvania indicted Charles Hallinan, Wheeler Neff, and Randall Ginger for RICO conspiracy; conspiracy; mail fraud; wire fraud; money laundering; and aiding and abetting the execution of a scheme to defraud consumers.[14]

About 17 months before Moseley was indicted, the CFPB had sued him—along with his son, Richard Moseley, Jr., his business associate, Christopher Randazzo, and 19 corporate co-defendants—in federal court in Missouri for certain acts relating to New Zealand- and Missouri-based payday lending operations known as "Hydra Financial."[15] The CFPB sued for civil violations of the CFP Act, the Electronic Fund Transfer Act, and the TILA. The CFPB's civil suit against the Hydra entities was stayed in March 2016 pending a resolution of the government's criminal charges against Moseley.[16] In these sorts of circumstances, the civil agency typically would pursue no further activity in the enforcement case until the criminal case is resolved.

Another example illustrative of CFPB-DOJ coordination is an April 2014 action in which the U.S. Attorney for the Southern District of New York alleged that Mission Settlement Agency, a debt-settlement company, defrauded consumers who had credit card debt. The government alleged that the defendants deceived consumers through fraudulent promises of programs to lower borrower debts despite the fact that the company did little or no work for the majority of its customers to reduce debts. Mission and its owner, Michael Levitis, pled guilty to fraud charges, resolving the first criminal case that the CFPB referred to the DOJ. Levitis pled guilty to one count of conspiracy to commit mail and wire fraud and one count of conspiracy to commit wire fraud, and he faced a maximum sentence of ten years in prison. The defendants also consented to settlement of a civil forfeiture action and a permanent injunction barring them from engaging in debt-relief or mortgage-relief services businesses. In April 2014, the CFPB dismissed its parallel civil suit against Levitis and Mission Settlement Agency. In November 2014, Levitis was sentenced to nine years in prison.

More recent civil-criminal coordination for protecting consumer-debtors has included the FTC. In January 2017, John Todd Williams—the owner of a debt-collection company that was alleged to have used illegal and aggressive debt-collection tactics—was sentenced to prison.[17] The case was prosecuted by the U.S. Attorney for the Southern District of New York upon referral from the FTC. A five-day jury trial was held in July 2016. Evidence at trial demonstrated that Williams's debt-collection company, Williams, Scott & Associates (WSA), pretended to be detectives or investigators and falsely threatened debtors that their debt was now elevated from a civil to a criminal matter that could be resolved only through immediate voluntary payment or arrest and jail. The investigation of WSA and Williams commenced in 2014. Within three years, Williams's co-defendants had received a sentence of time served, and Williams received a five-year prison term.

Similarly, in November 2016, Travell Thomas pled guilty to two felony charges in connection with a nationwide debt-collection business intended to cause consumers to overpay their debts.[18] The company's employees had pled guilty also. Thomas had prepared and disseminated scripts for debt collectors to follow. The grand jury alleged the company had made false threats in the course of collecting debts, including that the company was a law office and that warrants would be issued for the victims' arrests if they failed to repay debts. In February 2015, the FTC and New York Attorney General Eric Schneiderman filed civil suits to shut down the company's business. The FTC then referred the case to the U.S. Attorney for the Southern District of New York, who indicted Thomas eight months later. Each of the two charges to which Thomas pled guilty carries a maximum sentence of 20 years in prison and three years of supervised release. The sentencing hearing was on April 20, 2017, and Thomas received a sentence of 100 months.

Joint Criminal and Civil Investigations: Defense Implications

The similarities between the facts and law covered by the CFPB, the FTC, and criminal authorities—and the policies governing their work—reveal six important implications.

First, government policy provides that federal regulatory and law-enforcement authorities are to conduct investigations in parallel. For example, DOJ policy is:

- **Intake:** From the moment of case intake, attorneys should consider and communicate regarding potential civil, administrative, regulatory, and criminal remedies, and explore those remedies with the investigative agents and other government personnel.
- **Investigation:** During the investigation, attorneys should consider investigative strategies that maximize the government's ability to share information among criminal, civil, and agency administrative teams to the fullest extent appropriate to the case and permissible by law, including the use of investigative means other than grand jury subpoenas for documents or witness testimony.
- **Resolution:** At every key decision point between case intake and final resolution (e.g., declination, indictment, settlement, plea, and sentencing), attorneys should assess the potential impact of actions on criminal, civil, regulatory, and administrative proceedings to the extent appropriate.[19]

In light of the strong governmental preference to coordinate enforcement actions, counsel should assume that governmental civil and criminal authorities are coordinating their investigations generally. Given the CFPB's general propensity to maximally leverage each power it received under the CFP Act—including the mandate to make criminal referrals to the DOJ—the CFPB is likely to be coordinating closely with the criminal authorities, often acting as a scout for the criminal prosecutors to identify good potential prosecutions. Based on the similarities between the elements of a civil consumer financial protection violation and the criminal RICO or wire fraud statutes, it is also likely that the CFPB has presented the facts regarding potential opportunities for criminal prosecution to the U.S. Attorneys or other offices or divisions in the DOJ on an ongoing basis. It is also reasonable to assume that the number of ongoing, non-public, joint investigatory matters substantially exceeds the number of matters that have ripened to a public action or indictment.

Second, if a company or individual receives civil process—whether a civil subpoena, an OIG subpoena, or a civil complaint—the recipient should not infer that there is no criminal investigation. Moreover, under the parallel proceedings policies of the DOJ, the Attorney General is encouraging criminal prosecutors to use means of gathering information that would allow for the information to be readily shared with the civil side of the government.

Third, the CFPB often pleads "common enterprise" common-law theories, thereby modeling its liability theory after the elements required in a RICO claim. The *Hydra Financial* matter is an example in which the CFPB approved taking a public position on whether the agency could allege "common enterprise"-based civil liability. The "common enterprise" allegations are prominently featured in the CFPB's civil suit against the Hydra defendants. *Hydra Financial* later resulted in a criminal indictment. It may be that in the *Hydra Financial* matter, the CFPB sought to borrow from the RICO laws in crafting claims alleging unfair, deceptive or abusive practices. Accordingly, counsel should be vigilant to compare what RICO requires when defending a CFPB civil lawsuit and proactively assess claims for any hidden RICO exposure, as they could potentially arise in follow-on criminal prosecution or civil class action matters.[20]

Fourth, even as to criminal liability, the RICO statute applies to consumer lending. The indictments mentioned above reveal a DOJ policy that payday lending is an appropriate target of a racketeering charge, even though in the past it was mostly used for gambling, loansharking, and organized crime. The government's decision to bring charges in *Hydra Financial* (against Moseley), in Tucker/Muir's case, and in the Hallinan case indicate that the CFPB and USAO are closely coordinating their investigations and are bringing criminal cases where evidence exists to support charges.

To be clear, the circumstances that seem to justify an indictment must be rooted in fraudulent activity and not mere usury allegations or allegations of regulatory infractions. Moseley's and Tucker's entities made "loans" to consumers who had not authorized or even requested loans, withdrew finance charges surreptitiously through ACH debits from consumers' bank accounts, exploited cash-strapped consumers in manipulating payments to maximize finance charges by not applying payments to principal, and made misleading statements on the TILA disclosure. Similarly, the FTC's referral to the U.S. Attorney for the Southern District of New York indicates that criminal charges arose in the limited instance where defendants impersonated government officials to collect consumer debts through false threats. In this regard, the wire fraud and conspiracy to commit wire fraud charges brought against those individuals—whether in the context of lending, debt-settlement, or debt-collection businesses—all arise from what would appear to be clear-cut cases of consumer fraud.

As indicated in the Tucker/Muir and Moseley indictments, under certain circumstances, the collection of unlawful debt constitutes a crime. Specifically, participation in an enterprise that engages in the unlawful collection of debts is a violation of law, punishable by a fine or imprisonment not more than 20 years.[21] The RICO law states:

> It shall be *unlawful for any person employed by or associated with any enterprise* engaged in, or the activities of which affect, interstate or foreign commerce, *to conduct or participate, directly or indirectly, in* the conduct of such enterprise's affairs through a pattern of racketeering activity or *collection of unlawful debt*.[22]

Section 1961(6) defines "unlawful debt" as follows:

> [U]nlawful debt" means *a debt* (A) incurred or contracted in gambling activity which was in violation of law of the United States, a State or political subdivision thereof, or *which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury*, and (B) *which was incurred in connection with* the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or *the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate*.[23]

Collection of a single usurious debt is sufficient to satisfy Section 1961(6), provided that it was incurred in connection with the "business of lending money . . . at a rate usurious" and the defendant acted "knowingly, willfully and unlawfully."[24] It is also unlawful for any person to conspire to violate the provision above.[25] "Unlike a "pattern of racketeering activity" which requires proof of two or more predicate acts, to satisfy RICO's "collection of unlawful debt" definition, the government need only demonstrate a single collection."[26] The government is not required to establish a pattern of racketeering activity "since the alternative ground of 'collection of unlawful debt' is sufficient to establish liability."[27]

Most cases charging collection of unlawful debts have arisen in the context of organized crime,[28] although the U.S. Court of Appeals for the Second Circuit has affirmed the criminal conviction and sentence of imprisonment of an individual who engaged in loan sharking in a context unrelated to organized crime.[29] Also, several civil RICO claims have arisen recently in the consumer finance context.[30] The indictments of Tucker/Muir, Moseley, and Hallinan represent expansions in the DOJ's use of criminal RICO theories to target payday lending.

Fifth, it may be possible to argue that any criminal responsibility for conduct ended outside the statute of limitations, which is five years.[31] The statute of limitations is extended when the alleged pattern of racketeering activity includes violations of statutes enumerated in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).[32] FIRREA identifies criminal statutes (or predicate offenses) that involve or affect financial institutions and government agencies. Most of the predicate offenses deal specifically with banks or other financial institutions (e.g., bank fraud, 18 U.S.C. § 1344, or false statements to a bank in connection with a loan, 18 U.S.C. § 1014). The remaining predicate offenses include fraud offenses of general application, including mail and wire fraud (18 U.S.C. §§ 1341, 1343) when the offense "affect[s] a federally insured financial institution." If FIRREA is implicated, a ten-year statute of limitations may apply.[33]

Sixth, a defendant could face concurrent criminal and civil charges. In defending parallel civil and criminal cases, a defendant may use civil discovery tools to obtain information not otherwise available in a criminal case, including information regarding the government's investigation. In these circumstances, the CFPB or DOJ attorneys may seek a stay in a filed civil action while pursuing the criminal case.

But a defendant may not be aware of all government investigations. The DOJ and other state or federal law enforcement agencies could be covertly investigating the defendant at the same time the civil case is proceeding. A defendant then risks providing evidence in discovery that could be used by the other agencies to initiate or further a criminal investigation. While a defendant should always ask the DOJ whether an investigation is proceeding, the defendant may not discover the existence of a parallel investigation until later.

If the DOJ is successful in its criminal prosecution, the government will argue that the conviction collaterally estops the defendant from re-litigating issues determined in the criminal prosecution. If the defendant pleads guilty, the defendant's admission will be offered as evidence in subsequent civil litigation.

Conclusion

The CFPB and the FTC have been rigorous in converting civil consumer protection cases into opportunities to provide criminal referrals. The civil enforcement attorneys provide a criminal referral to the U.S. Attorney or the DOJ in an effort to achieve a "win-win" result for the government across agencies. For example, as in the prosecutions of the Williams, Levitis, and Mosely cases, once the case was referred by the CFPB or the FTC to the U.S. Attorney, the civil authorities stayed their cases, unleashing the criminal authorities—thereby saving limited, civil-enforcement resources and arguably maximizing deterrence. Similarly, the U.S. Attorneys attain benefits from these referrals by launching criminal matters from a platform of completed civil investigative files and prosecuting cases successfully with relatively less expenditure of resources from FBI or postal agents.

Based on the law applied in these types of joint investigations, businesses and their counsel need to assess criminal implications—particularly in consumer financial matters—and be cognizant of the defense of a civil investigation quickly before it is made even more complex by a criminal probe that may be lurking behind it. Departing from the past practices of bank regulators, the CFPB's policy for joint investigations is intended to allow civil and criminal authorities to actively progress towards a final, parallel action in consumer protection, and this increases the stakes at issue in CFPB investigations for financial companies and their principals. ■

1 Pub. L. No. 111-203, 124 Stat. 1375 (2010).

2 12 U.S.C. § 5564(a).

3 *Id.* § 5564(b).

4 "If the [CFPB] obtains evidence that any person, domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, the [CFPB] shall transmit such evidence to the Attorney General of the United States, who may institute criminal proceedings under appropriate law." *Id.* § 5566.

5 http://files.consumerfinance.gov/f/201212_cfpb_doj-fair-lending-mou.pdf.

6 Executive Order 13519, 74 Fed. Reg. 60,123 (Nov. 19, 2009).

7 At press time, the Trump administration had not articulated an intention to remove the CFPB from the FFETF, had not mentioned CFPB-DOJ coordination, and had discussed the need for regulatory relief in only general terms.

8 https://www.ftc.gov/system/files/documents/cooperation_agreements/150312ftc-cfpb-mou.pdf

9 15 U.S.C. § 45(a).

10 *Id.* § 45(b).

11 https://www.justice.gov/atr/division-manual.

12 *See* United States v. Tucker, Case No. 1:16-CR-00091-PKC (S.D.N.Y.) (before Judge Castel).

13 *See* United States v. Moseley, Case No. 1:16-CR-00079-ER (S.D.N.Y.) (before Judge Ramos).

14 *See* United States v. Hallinan, Case No. 2:16-CR-00130-ER (E.D. Pa.) (before Judge Robreno).

15 CFPB v. Moseley, Case No. 4:14-CV-000789-DW (W.D. Mo.) (before Judge Whipple).

16 Order, CFPB v. Moseley, Case No. 4:14-CV-00789-DW (W.D. Mo. Mar. 4, 2016) (granting the defendants' unopposed motion for a stay of this case until the resolution of the criminal matter).

17 United States v. Williams, Scott & Assocs., Case No. 1:14-cr-00784-RJS (S.D.N.Y.).

18 United States v. Lavin, Case No. 1:15-cr-00667-KPF (S.D.N.Y.).

19 U.S. Attorneys' Manual § 1-12.000, https://www.justice.gov/usam/usam-1-12000-coordination-parallel-criminal-civil-regulatory-and-administrative-proceedings.

20 To state a RICO claim based on the collection of an unlawful debt, a civil plaintiff must establish, inter alia, that individual defendants participated in the conduct of the affairs of the enterprise through collection of unlawful debt; the debt was unenforceable in whole or in part because of state or federal laws relating to usury; the debt was incurred in connection with the

business of lending money at a usurious rate; and the usurious rate was at least twice the enforceable rate. Sparrow v. Bank of Am., N.A., No. JFM-13-0388, 2014 WL 4388350, at *7 (D. Md. Sept. 4, 2014) (dismissing RICO claim for failure to allege that mortgage loan was usurious or any information regarding specific interest rates or how the loans exceeded the usury limit); Weisel v. Pischel, 197 F.R.D. 231, 241 (E.D.N.Y. 2000) (granting summary judgment dismissing civil RICO claims where plaintiffs were unable to prove that defendants were in the business of lending money at usurious rates); *but see* Dillon v. BMO Harris Bank, N.A., 16 F. Supp. 3d 605, 618 (M.D.N.C. 2014) (in payday lending case involving interest rates of 139% to over 700%, denying motion to dismiss and holding that plaintiff had adequately alleged each civil RICO element for collection of unlawful debts against bank defendants).

21 18 U.S.C. § 1963(a).

22 *Id.* § 1962(c) (emphasis added).

23 *Id.* § 1961(6) (emphasis added).

24 United States v. Biasucci, 786 F.2d 504, 512, 513 (2d Cir. 1986).

25 18 U.S.C. § 1962(d).

26 United States v. Giovanelli, 945 F.2d 479, 490 (2d Cir. 1991) (quoting 18 U.S.C. § 1961(6)) (unlawful debt collection theory—based on loansharking—provided a valid basis to affirm convictions as an alternative to legal theory of a pattern of racketeering activity); *see also* Leslie G. Kanter, *RICO's Unlawful Debt Collection Provision*, 52 Brook. L. Rev. 957, 970–71 (1986) ("There is no bright line rule to be applied in determining whether a defendant satisfies the in 'the business of' requirement. While it is clear that there must be a showing of prior usurious loans, it is not clear how many loans are required before a defendant will be found to be in 'the business of lending money' at usurious rates.").

27 Organized Crime and Racketeering Section, U.S. Dep't of Justice, Criminal Rico: 18 U.S.C. §§ 1961–1968, A Manual for Federal Prosecutors at 133 (6th rev. ed. May 2016) (citations omitted).

28 *See, e.g.*, United States v. Megale, 363 F. Supp. 2d 359, 364 (D. Conn. 2005) (in a case brought against underboss and associates in the Gambino crime family, holding that—where maximum interest rate in Connecticut was 12% per year—loaning $2,500 at a rate of $100 per week in interest sufficiently charged that defendants charged an unlawful debt by demanding far in excess of twice the lawful rate of interest, since the lawful weekly interest amount would be $5.77 per week).

29 The Second Circuit held that evidence was sufficient to affirm the conviction of a defendant who—outside the organized crime context—was convicted of maintaining an interest in or control of an enterprise engaged in interstate commerce through the collection of unlawful debt in violation of 18 U.S.C. § 1962(b). United States v. Jacobson, 691 F.2d 110, 111 (2d Cir. 1982) (series of high-interest loans made to assist individuals struggling with failing bagel bakery businesses).

30 A civil RICO claim was sustained in a case of Internet payday lending. *BMO Harris Bank, N.A.*, 16 F. Supp. 3d at 618. In addition, last year, the Third Circuit held—as a matter of first impression—that a repossession company's forfeiture of a debtor's car as collateral for usurious loan amounted to "collection of unlawful debt" under RICO. Goldenstein v. Repossessors Inc., 815 F.3d 142, 148 (3d Cir. 2016).

31 18 U.S.C. § 3282(a).

32 Pub. L. No. 101-73, 103 Stat. 183 (1989).

33 *See id.* § 3293 (providing a 10-year limitations period for criminal charges for bank fraud as well as wire fraud and mail fraud that "affects a financial institution").