799 F.3d 633
United States Court of Appeals,
Seventh Circuit.

Bryana BIBLE, Individually and on Behalf of the Proposed Class, Plaintiff–Appellant,
v.
UNITED STUDENT AID FUNDS, INC., Defendant–Appellee.

No. 14–1806.
|
Argued Oct. 2, 2014.
|
Decided Aug. 18, 2015.

Opinion

HAMILTON, Circuit Judge.

Plaintiff Bryana Bible obtained a student loan under the Federal Family Education Loan Program. She defaulted in 2012 but promptly agreed to enter into a rehabilitation agreement that required her to make a series of reduced monthly payments. She timely made all of the payments that were required of her under this agreement, and she remains current on her loan payments. Although Bible complied with her obligations under the repayment agreement, a guaranty agency assessed over $4,500 in collection costs against her.

The terms of Bible's loan were governed by a form document known as a Federal Stafford Loan Master Promissory Note (MPN). This form has been approved by the U.S. Department of Education and is used in connection with many student loans across the country. The MPN incorporates the Higher Education Act and its associated regulations. In pertinent part, the MPN provides that Bible must pay "reasonable collection fees and costs, plus court costs and attorney fees" if she defaults on her loan. As we will see, "reasonable collection fees and costs" are defined by regulations issued by the Secretary of Education under the authority expressly conferred by the Higher Education Act. The MPN provided that Bible would owe only those collection costs that are permitted by the Higher Education Act and its regulations.

Bible sued the guaranty agency (defendant United Student Aid Funds, Inc.) alleging breach of contract and a violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 *et seq.* Her breach of contract theory is that the MPN incorporated federal regulations that prohibit the guaranty agency from assessing collection costs against her because she timely entered into an alternative repayment agreement and complied with that agreement. Her RICO claim alleges that the guaranty agency, in association with a debt collector and a loan service provider, committed mail fraud in violation of 18 U.S.C. § 1341 and wire fraud in violation of 18 U.S.C. § 1343 when it assessed collection costs of more than $4,500 against her despite its representations that her "current collection cost balance" and "current other charges" were zero and that these costs would be "reduced" once she completed the rehabilitation process.

The district court granted the guaranty agency's motion to dismiss Bible's first amended class action complaint (we call this the "amended complaint") under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim for relief. The district court held that both claims were ***639** "preempted" by the Higher Education Act. It reasoned that both claims depend on alleged violations of the Act and should not be permitted because the Act does not provide a private right of action. The district court held in the alternative that the amended complaint failed to state a claim that is plausible on its face. It concluded that the breach of contract claim failed because both the MPN and the Higher Education Act expressly permit imposing collection costs against borrowers who default on their loans. The district court also concluded that the RICO claim failed because Bible's amended complaint "has not shown participation in a scheme to defraud; commission of an act with intent to defraud; or the use of mails or interstate wires in furtherance of a fraudulent scheme." *Bible v. United Student Aid Funds, Inc.,* No. 1:13–CV–00575–TWP–TAB, 2014 WL 1048807, at *10 (S.D.Ind. Mar. 14, 2014).

We reverse. Neither of Bible's claims is preempted by the Higher Education Act. Bible's state law breach of contract claim is not preempted because it does not conflict with federal law. The contract at issue simply incorporates applicable federal regulations as the standard for compliance. Accordingly, the duty imposed by the state law is precisely congruent with the federal requirements. A state law claim that does not seek to vary the requirements of federal law does not conflict with federal law.

We apply the Secretary of the Education's interpretation of the applicable statutes and regulations, which is consistent with Bible's. (The Secretary accepted our invitation to file an *amicus* brief addressing the question.) The Secretary interprets the regulations to provide that a guaranty agency may not impose collection costs on a borrower who is in default for the first time but who has timely entered into and complied with an alternative repayment agreement. Nor is Bible's RICO claim preempted. RICO is a federal statute and thus is not preempted by another federal statute, and we see no conflict between RICO and the Higher Education Act. On the merits, both the breach of contract and RICO claims satisfy the plausibility standard under Rule 12(b)(6).

I. *Factual and Procedural Background*

We review *de novo* a district court's decision to grant a motion to dismiss under Rule 12(b)(6). E.g., *CEnergy–Glenmore Wind Farm No. 1, LLC v. Town of Glenmore,* 769 F.3d 485, 487 (7th Cir.2014). We accept as true all factual allegations in the amended complaint and draw all permissible inferences in Bible's favor. E.g., *Fortres Grand Corp. v. Warner Bros. Entertainment Inc.,* 763 F.3d 696, 700 (7th Cir.2014). To avoid dismissal under Rule 12(b)(6), Bible's amended complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Ashcroft v. Iqbal,* 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009), quoting *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "Plausibility" is not a synonym for "probability" in this context, but it asks for "more than a sheer possibility that a defendant has acted unlawfully.' " *Olson v. Champaign County,* 784 F.3d 1093, 1099 (7th Cir.2015), quoting *Iqbal,* 556 U.S. at 678, 129 S.Ct. 1937.

In deciding a Rule 12(b)(6) motion, the court may consider documents attached to a complaint, such as contract documents, without converting the motion ***640** into one for summary judgment. See Fed.R.Civ.P. 10(c). Bible attached the following documents to her amended complaint: (1) the promissory note or MPN, (2) an April 12, 2012 letter to Bible from General Revenue Corp. (GRC), which we call the "default letter," (3) an application for loan rehabilitation sent by GRC on April 27, 2012, which we call the "rehabilitation agreement," (4) a copy of Bible's payment history with the defendant guaranty agency United Student Aid Funds, Inc., and (5) a copy of a contract between USA Funds and Sallie Mae Corp.[1]

A. *The Higher Education Act and Regulatory Background*

Congress enacted the Higher Education Act of 1965 (HEA or the Act), now codified as amended at 20 U.S.C. § 1001 *et seq.,* "to keep the college door open to all students of ability, regardless of socioeconomic background." *Rowe v. Educational Credit Management Corp.,* 559 F.3d 1028, 1030 (9th Cir.2009) (citation and internal quotation marks omitted); see also 20 U.S.C. § 1070(a) (identifying purpose of the statute). Among other things, the Act created the Federal Family Education Loan Program (FFELP), "a system of loan guarantees meant to encourage lenders to loan money to students and their parents on favorable terms." *Chae v. SLM Corp.,* 593 F.3d 936, 938–39 (9th Cir.2010) (footnote omitted). The Secretary of Education administers the FFELP and has issued regulations to carry out the program.

In general, the FFELP regulates three layers of student loan transactions: (1) between lenders and borrowers, (2) between borrowers and guaranty agencies, and (3) between guaranty agencies and the Department of Education. See *Chae,* 593 F.3d at 939. Under the program, lenders use their own funds to make loans to students attending postsecondary institutions. These loans are guaranteed by guaranty agencies and reinsured by the federal government. See 20 U.S.C. § 1078(a)-(c). Because of the reinsurance commitment, the federal government serves as the ultimate guarantor on each loan.

This lawsuit deals primarily with the second layer of transactions—the relationship between a student borrower who has defaulted for the first time and her guaranty agency. When a borrower defaults on a loan and the lender is unable to recover the amount despite due diligence, the lender notifies the guaranty agency of ***641** the default and the guaranty agency purchases the loan from the lender. See *Chae,* 593 F.3d at 939. Once the lender has transferred the debt to the guaranty agency, that agency may recover its losses from the Department of Education. See 20 U.S.C. § 1078(c)(1)(A), (E); 34 C.F.R. § 682.406(a). The guaranty agency must then take numerous steps to collect the defaulted student loan. The regulations at issue here relate to this stage of the process.

To understand these regulations, some background is helpful. In the mid–1980s, Congress grew concerned that federal taxpayers were effectively footing the bill for the costs of collecting defaulted student loans. In 1986 Congress amended the HEA to require guaranty agencies to assess collection costs against borrowers to prevent these costs from being passed on to federal taxpayers. See *Black v. Educational Credit Mgmt. Corp.,* 459 F.3d 796, 799 (7th Cir.2006). The relevant statutory provision provides simply that "a borrower who has defaulted on a loan ... shall be required to pay ... reasonable collection costs." 20 U.S.C. § 1091a(b)(1). Congress chose not to define the meaning of "reasonable collection costs" in the statute and instead "left it up to the Secretary [of Education] to interpret that term through regulations." *Black,* 459 F.3d at 799; 20 U.S.C. § 1082(a)(1) (delegating authority to the Secretary of Education to "prescribe such regulations as may be necessary to carry out the purposes" of FFELP).

The regulations define "reasonable collection costs." Two regulations are central to this lawsuit.[2] We describe these regulations in detail below, and we ultimately agree with the interpretation of the Secretary of Education, which is consistent with Bible's. In short, 34 C.F.R. § 682.405 provides that guaranty agencies must create loan rehabilitation programs for all borrowers who have enforceable promissory notes, and 34 C.F.R. § 682.410 establishes fiscal, administrative, and enforcement requirements that a guaranty agency must satisfy to participate in the FFELP. One requirement is that a guaranty agency must give a borrower who has defaulted notice and the opportunity to enter into a repayment agreement before it assesses collection costs or reports the default to a consumer reporting agency. 34 C.F.R. § 682.410(b)(5)(ii)(D). The guaranty agency is not permitted to charge collection costs to the borrower if (1) this is the first time the borrower has defaulted, (2) she enters into a repayment agreement within 60 days of receiving notice that the guaranty agency has paid the default claim, and (3) she complies with that agreement. Imposing collection costs on a borrower under these circumstances would be "unreasonable" within the meaning of 20 U.S.C. § 1091a(b)(1).

B. *Bible's Loan, Default, and Decision to Enter into the Rehabilitation Agreement*

In June 2006, Bible obtained a student loan. The written agreement governing her loan is the Federal Stafford Loan Master Promissory Note (MPN), which identifies Citibank as the "Lender" and defendant United Student Aid Funds (USA ***642** Funds) as the "Guarantor, Program, or Lender." The MPN expressly incorporates the Higher Education Act and its associated regulations into the terms of the contract: "Loans disbursed under this MPN are subject to the annual and aggregate loan limits specified in the Higher Education Act of 1965, as amended, 20 U.S.C. [§] 1070, et seq., and applicable U.S. Department of Education regulations (collectively referred to as the 'Act')."

The contract term covering "late charges and collection costs" states:

> The lender may collect from me: (i) a late charge for each late installment payment if I fail to make any part of a required installment payment within 15 days after it becomes due, and (ii) any other charges and fees *that are permitted by the Act for the collection of my loans.* If I default on any loans, I will pay reasonable collection fees and costs, plus court costs and attorney fees.

(Emphasis added.) The "governing law and notices" term provides: "The terms of this MPN will be interpreted in accordance with the applicable federal statutes and regulations, and the guarantor's policies. Applicable state law, except as preempted by federal law, may provide for certain borrower rights, remedies, and defenses in addition to those stated in this MPN."

In 2012, Citibank determined that Bible was in default and transferred the debt to USA Funds, which paid Citibank's default claim. To comply with its obligations under the HEA and its associated regulations, USA Funds, through its agent General Revenue Corp. (GRC), mailed Bible a form letter dated April 12, 2012 saying that her loan was in default and identifying several options for resolving her debt, including the opportunity for loan rehabilitation. This default letter included a table with the following information:

Current	Current	Current

	Current Principal	Current Interest	Collection Cost Balance	Other Charges	Interest Rate
Citibank, N.A.	6556.64	32.94	0.00	0.00	6.800%
Citibank, N.A.	6934.09	34.83	0.00	0.00	6.800%
Citibank, N.A.	2186.35	11.07	0.00	0.00	6.800%
Citibank, N.A.	2295.07	11.61	0.00	0.00	6.800%

The letter noted that Bible's current total amount due was $18,062.60.

Between April 12 and April 25, Bible and her attorney spoke to GRC on the phone three times to negotiate a loan rehabilitation agreement. Bible and GRC agreed on a rehabilitation plan requiring monthly payments of $50. On April 27, GRC faxed Bible a form rehabilitation agreement. Bible promptly signed the agreement and returned it by fax on April 30, 2012.

The rehabilitation agreement included another table, identical to the one displayed in the default letter except for the current interest column:

	Current Principal	Current Interest	Current Collection Cost Balance	Current Other Charges	Current Interest Rate
Citibank, N.A.	6556.64	51.24	0.00	0.00	6.800%
Citibank, N.A.	6934.09	54.18	0.00	0.00	6.800%
Citibank, N.A.	2186.35	17.22	0.00	0.00	6.800%
Citibank, N.A.	2295.07	18.06	0.00	0.00	6.800%

***643** The agreement also said that Bible's current total amount due was $18,112.85. Accumulating interest accounted for the $50.25 increase in Bible's total balance. The figures for her "current collection cost balance" and "current other charges" remained at all times $0.

Five paragraphs above the signature line, toward the end of the rehabilitation agreement, the following language appears:

> Once rehabilitation is complete, collection costs that have been added will be reduced to 18.5% of the unpaid principal and accrued interest outstanding at the time of Loan Rehabilitation. Collection costs may be capitalized at the time of the Loan Rehabilitation by your new lender, along with outstanding accrued interest, to form one new principal amount.

The paragraph immediately above the signature line states: "By signing below, I understand and agree that the lender may capitalize collection costs of 18.5% of the outstanding principal and accrued interest upon rehabilitation of my loan(s)."

After signing the rehabilitation agreement, Bible made nine on-time payments of $50. Although she fully complied with her obligations under this agreement, USA Funds assessed collection costs against her in the amount of $4,547.44. It applied her monthly payments toward the collection costs rather than the principal. When Bible filed this lawsuit, she had not completed the rehabilitation process. (Her loan had not yet been sold to an eligible lender.) She remains current on her loan under the terms of the rehabilitation agreement.

C. *Procedural History*

Bible filed a complaint individually and on behalf of a proposed class of other borrowers who had entered into loan agreements under the HEA but defaulted, later entered into similar rehabilitation agreements, and were assessed collection costs. She moved to certify the class and then filed an amended complaint alleging breach of contract under Indiana law and a violation of RICO, 18 U.S.C. § 1962(c). USA Funds moved to dismiss. The district court granted the motion to dismiss and entered a final judgment dismissing both claims with prejudice. It also denied as moot Bible's motion for class certification. Bible appeals the district court's decision regarding both claims. After oral argument, we invited the Secretary of Education to file an *amicus* brief addressing his interpretation of the relevant statutory framework and federal regulations. He did so, and the parties have responded to those views.

II. *Analysis*

We conclude that (A) Bible has stated a viable breach of contract claim under Indiana law; (B) federal law does not preclude Bible from pursuing this state-law ***644** claim; and (C) Bible has stated a viable RICO claim under federal law, though it remains to be seen whether she can support that claim with evidence of fraudulent intent.

* * * *

C. *RICO Claim*

We now turn to Bible's civil RICO claim alleging a violation of 18 U.S.C. § 1962(c). Section 1962(c) makes it "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." 18 U.S.C. § 1962(c). A civil remedy is available under 18 U.S.C. § 1964. To establish a violation of § 1962(c), Bible must eventually prove four elements: (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. E.g., *Jennings v. Auto Meter Products, Inc.,* 495 F.3d 466, 472 (7th Cir.2007). USA Funds contends that Bible has failed to allege plausibly the existence of an enterprise, racketeering activity, or a pattern. Whether or not detailed allegations of each element (other than the alleged fraud) are required at the pleading stage, cf. *Johnson v. City of Shelby,* 574 U.S. ——, 135 S.Ct. 346, 347, 190 L.Ed.2d 309 (2014) (per curiam) (reversing dismissal for failure to invoke proper statute in complaint); *Runnion v. Girl Scouts of Greater Chicago,* 786 F.3d 510, 517–18, 528 (7th Cir.2015) (reversing dismissal of complaint), we find that Bible's allegations are sufficient. It remains to be seen whether she can marshal evidence to support her claim, but that's a matter for further proceedings in the district court.

1. *Enterprise*

RICO defines the term "enterprise" broadly to include "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). An association-in-fact does not require any structural features beyond "a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purposes." *Boyle v. United States,* 556 U.S. 938, 946, 129 S.Ct. 2237, 173 L.Ed.2d 1265 (2009). But the definition does require that the defendant be a "person" that is distinct from the RICO enterprise. *United Food & Commercial Workers Unions & Employers Midwest Health Benefits Fund v. Walgreen Co.,* 719 F.3d 849, 853–54 (7th Cir.2013) (citations omitted). Under § 1962(c), the plaintiff must also establish that the defendant "person" participated in the operation or management of the distinct enterprise. *Reves v. Ernst & Young,* 507 U.S. 170, 179, 113 S.Ct. 1163, 122 L.Ed.2d 525 (1993).

Bible identifies USA Funds as the defendant "person" for purposes of RICO, and she defines the "enterprise" as an association-in-fact consisting of USA Funds, GRC, and Sallie Mae. She alleges that the members of the enterprise associated for the common purpose of maximizing revenue before, during, and after the loan rehabilitation process by unlawfully imposing collection costs on borrowers who had defaulted. USA Funds uses GRC as its debt collector, and Sallie Mae is the parent company of GRC. Although Sallie Mae and USA Funds are "technically independent," Sallie Mae has purchased a number of USA Funds' departments and exerts "extensive financial and operational control" over USA Funds. Am. Compl. ¶ 95.

Our cases have distinguished between two situations: a run-of-the-mill ***656** commercial relationship where each entity acts in its individual capacity to pursue its individual self-interest, versus a truly joint enterprise where each individual entity acts in concert with the others to pursue a common interest. See *United Food & Commercial Workers,* 719 F.3d at 855 ("This type of interaction, however, shows only that the defendants had a commercial relationship, not that they had joined together to create a distinct entity for purposes of improperly filling ... prescriptions."); *Crichton v. Golden Rule Ins. Co.,* 576 F.3d 392, 400 (7th Cir.2009) (distinguishing "garden-variety marketing arrangement" comprised of distinct entities from RICO enterprise). This distinction is important. Without it, "every conspiracy to commit fraud that requires more than one person to commit is a RICO organization and consequently every fraud that requires more than one person to commit is a RICO violation." *Stachon v. United Consumers Club, Inc.,* 229 F.3d 673, 676 (7th Cir.2000), quoting *Bachman v. Bear, Stearns & Co.,* 178 F.3d 930, 932 (7th Cir.1999) (footnote and internal quotation marks omitted).

Mindful of this distinction, we conclude that Bible has pled more than a run-of-the-mill commercial relationship. Bible alleges a number of facts permitting the reasonable inference that, with respect to managing accounts before, during, and after the loan rehabilitation process, USA Funds, GRC, and Sallie Mae work as a single enterprise.

First, she alleges an unusual degree of economic interdependence among the entities. According to the amended complaint, USA Funds agreed to place all defaulted loans with Sallie Mae for portfolio management. Sallie Mae was then authorized to refer a large number of the defaulted loans to its "affiliates" or subsidiary debt collectors such as GRC. In addition, USA Funds committed to sell at least half of its rehabilitated loans to Sallie Mae. Under this arrangement, USA Funds not only paid Sallie Mae directly to manage its portfolio but also compensated Sallie Mae indirectly by using its affiliates and subsidiaries for debt collection and by agreeing to sell a large chunk of rehabilitated loans to Sallie Mae.

Second, Bible alleges that the entities do not operate as completely separate entities in managing the loan rehabilitation process. For example, she alleges that: the printout on top of the rehabilitation agreement indicates that it was sent from a Sallie Mae fax machine; in answers to interrogatories in another lawsuit, GRC identified five Sallie Mae officials who had approved and provided input into the wording of GRC's collection correspondence, including the correspondence at issue in this case; Sallie Mae assumes responsibility for compliance with some of USA Funds' statutory duties, including the delivery of privacy policies to borrowers; Sallie Mae has agreed to a marketing plan under which Sallie Mae will promote USA Funds as a guaranty agency; Sallie Mae has agreed not to use another guaranty agency unless, despite Sallie Mae's best efforts, a school or lender insists; associate counsel at Sallie Mae recently appeared at a settlement conference in a Fair Debt Collection Practices Act lawsuit against GRC purporting to have settlement authority on behalf of GRC; and in another FDCPA lawsuit, GRC negotiated a settlement release that covered Sallie Mae and other entities "related to" Sallie Mae, including USA Funds, despite the fact that neither Sallie Mae nor USA Funds were named as defendants in the case.

These allegations distinguish this case from cases like *United Food & Commercial Workers,* 719 F.3d at 854–55 (noting ***657** that complaint failed to allege "that officials from either company involved themselves in the affairs of the other"), and *Crichton,* 576 F.3d at 400 (noting that plaintiff's claim "begins and ends" with the fraud allegedly committed by individual entity, not enterprise). Taken together, Bible's allegations indicate a common purpose, relationships among the three entities associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purposes. See, e.g., *Sykes v. Mel Harris & Associates, LLC,* 757 F.Supp.2d 413, 426–27 (S.D.N.Y.2010) (complaint plausibly alleged RICO enterprise comprised of debt-buying company, debt collection agency, process service company, and others).

USA Funds contends that even if there is an enterprise, USA Funds' own alleged actions could not amount to participation in the operation or management of the enterprise's affairs because USA Funds did not operate or manage the collection efforts related to Bible's defaulted loans. We disagree. Bible alleges that USA Funds "directed GRC to unlawfully and fraudulently impose collection costs [on] borrowers," Am. Compl. ¶ 88, and that "GRC carried out these instructions." *Id.,* ¶ 89. She also alleges that GRC secured a release for USA Funds and Sallie Mae in the FDCPA case mentioned above because "both [USA Funds] and Sallie Mae were intimately involved in GRC's debt collection activities." *Id.* ¶ 105.

USA Funds points out that merely performing a service for another entity is not sufficient to establish this element. That is correct as far as it goes. See *Goren v. New Vision Int'l, Inc.,* 156 F.3d 721, 728 (7th Cir.1998) ("Indeed, simply performing services for an enterprise, even with knowledge of the enterprise's illicit nature, is not enough to subject an individual to RICO liability under § 1962(c); instead, the individual must have participated in the operation and management of the enterprise itself."). But that principle does not help USA Funds. If we were to apply it here, it might mean that GRC did not participate in the operation or management of the enterprise's affairs since GRC was hired by USA Funds to perform the debt collection activities. But the same cannot be said for USA Funds, which hired GRC, directed it to impose the collection costs at issue, and was "intimately involved" in GRC's debt collection activities more generally. Bible's amended complaint pleads factual content permitting the reasonable inference that USA Funds, in conjunction with Sallie Mae, actually directed the enterprise's debt collection activities even though GRC was the entity that dealt with the borrower most directly. She has plausibly alleged that USA Funds conducted or participated in the enterprise's affairs.

2. *Racketeering Activity and Fraudulent Intent*

USA Funds next argues that Bible has not plausibly alleged racketeering activity. "Racketeering activity" is defined in 18 U.S.C. § 1961(1)(B) to include mail fraud in violation of 18 U.S.C. § 1341 and wire fraud in violation of 18 U.S.C. § 1343. "The elements of mail fraud ... are: '(1) the defendant's participation in a scheme to defraud; (2) defendant's commission of the act with intent to defraud; and (3) use of the mails in furtherance of the fraudulent scheme.' " *Williams v. Aztar Indiana Gaming Corp.,* 351 F.3d 294, 298–99 (7th Cir.2003), quoting *United States v. Walker,* 9 F.3d 1245, 1249 (7th Cir.1993). The elements of wire fraud are the same except that it requires use of interstate wires rather than mail in furtherance of the scheme. E.g., *United States v. Green,* 648 F.3d 569, 577–78 (7th Cir.2011).

***658** Bible alleges both mail and wire fraud. Her allegations are subject to Federal Rule of Civil Procedure 9(b), which requires her to plead fraud with particularity. E.g., *Slaney v. Int'l Amateur Athletic Federation,* 244 F.3d 580, 597 (7th Cir.2001). As a result, Bible "must, at a minimum, describe the two predicate acts of fraud with some specificity and state the time, place, and content of the alleged false representations, the method by which the misrepresentations were communicated, and the identities of the parties to those misrepresentations." *Id.*

Bible's fraud allegations are based on the form default letter and rehabilitation agreement. According to the amended complaint, USA Funds, through its agent GRC, mailed the default letter telling Bible that her loan was in default. The letter said that her "current collection cost balance" and "current other charges" were zero. Like the default letter, the rehabilitation agreement, which was faxed, said that her "current collection cost balance" and "current other charges" were zero. She alleges that USA Funds uses form documents substantially similar to the default letter and rehabilitation agreement in its dealings with thousands of other borrowers who have defaulted on their loans.

Bible's theory of fraud is that the statements in the default letter and rehabilitation agreement that her "current collection cost balance" and "current other charges" were zero were false, misleading, or contained material omissions. They implied that collection costs would not be assessed against her if she promptly agreed to enter into a repayment program. According to the amended complaint, these statements were designed to deceive her into entering into the rehabilitation program by concealing the fact that thousands of dollars in collection costs would be imposed by the guaranty agency before she had completed the rehabilitation process.

USA Funds argues that Bible has not plausibly alleged fraud because the collection costs were permitted by federal regulations and because she has failed to allege that USA Funds intended to deceive her. Neither argument can justify dismissal under Rule 12(b)(6). Whether Bible can eventually come forward with evidence of fraudulent intent is a question for the district court on remand.

As discussed above, the collection costs were not permitted by federal regulations, at least as interpreted by the Secretary of Education. In addition, even if the costs had been permitted by the regulations, Bible alleges that USA Funds misled her in its correspondence leading to her agreeing to the repayment program. We recognize that the correspondence to Bible signaled that collection costs could be assessed in the future. Yet that same correspondence said that she owed no collection costs, which could reasonably be understood as implying that there would be nothing to add in the future. A Rule 12(b)(6) motion to dismiss is not a suitable procedure for determining that these documents could not possibly have been misleading to Bible or other borrowers like her.

The question of USA Funds' intent also cannot be decided on the pleadings. At this stage of the litigation, Bible has plausibly alleged that USA Funds intended to deceive her. See Fed.R.Civ.P. 9(b) (fraudulent intent "may be alleged generally"). She alleges that it sent her a form saying that her collection costs were zero and that it made this representation intending to induce her to enter into a repayment program by hiding that she would be forced to pay over $4,500 in collection costs if she did. These representations could be deemed literally false. Even if they could ***659** avoid literal falsity, omission or concealment of material information can be sufficient to constitute mail or wire fraud. See *United States v. Morris,* 80 F.3d 1151, 1161 (7th Cir.1996) ("We reiterated, moreover, that the statutes apply not only to false or fraudulent representations, but also to the omission or concealment of material information, even where no statute or regulation imposes a duty of disclosure."); *Emery v. American General Finance, Inc.,* 71 F.3d 1343, 1348 (7th Cir.1995); *United States v. Biesiadecki,* 933 F.2d 539, 543 (7th Cir.1991); *United States v. Keplinger,* 776 F.2d 678, 697 (7th Cir.1985).

The rehabilitation agreement warned Bible that collection costs could be capitalized at the time of rehabilitation by the new lender. See App. 139 ("Collection costs may be capitalized at the time of the Loan Rehabilitation by your new lender, along with outstanding accrued interest, to form one new principal amount."); *id.* ("By signing below, I understand and agree that the lender may capitalize collection costs of 18.5% of the outstanding principal and accrued interest upon rehabilitation of my loan(s)."). One straightforward reading of this language is that it authorized the new lender—not the guaranty agency—to capitalize *existing collection costs,* not to impose new ones, and then only after rehabilitation is complete (i.e., after the guaranty agency has sold the loan to a private lender).

At this preliminary pleading stage, we do not know USA Funds' state of mind when it sent the default letter or rehabilitation agreement. Bible has plausibly alleged that the statements in the default letter and the rehabilitation agreement were designed to induce her to enter into the repayment agreement while concealing that she would be assessed over $4,500 in collection costs if she did so. Her allegations of racketeering activity should survive the Rule 12(b)(6) motion to dismiss.[8]

3. *Pattern*

We turn next to USA Funds' argument that Bible has failed to allege a pattern of racketeering activity. "A pattern of racketeering activity consists, at the very least, of two predicate acts of racketeering committed within a ten-year period." *Jennings v. Auto Meter Products, Inc.,* 495 F.3d 466, 472 (7th Cir.2007), citing 18 U.S.C. § 1961(5). To prove a pattern, Bible will need to satisfy the "continuity plus relationship" test, which requires that the predicate acts be related to one another (the relationship prong) and that they pose a threat of continued criminal activity (the continuity prong). *Id.* at 473, quoting *Midwest Grinding Co. v. Spitz,* 976 F.2d 1016, 1022 (7th Cir.1992). The relationship prong is satisfied "if the criminal acts 'have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.' " *DeGuelle v. Camilli,* 664 F.3d 192, 199 (7th Cir.2011), quoting ***660** *H.J. Inc. v. Northwestern Bell Telephone Co.,* 492 U.S. 229, 240, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989). The continuity prong is satisfied by showing either that the criminal behavior, although it has ended, was so durable and repetitive that it "carries with it an implicit threat of continued criminal activity in the future," *Midwest Grinding Co.,* 976 F.2d at 1023, or that the past conduct "by its nature projects into the future with a threat of repetition," *H.J. Inc.,* 492 U.S. at 241, 109 S.Ct. 2893.

Whether or not Bible needed to plead details of her pattern theory, cf. *Runnion v. Girl Scouts,* 786 F.3d at 528, Bible's allegations satisfy the relationship-plus-continuity test. She alleges that USA Funds, through its enterprise, unlawfully imposed collection costs on thousands of borrowers in default in the same manner it did to her. She alleges that USA Funds has sent the form document that became the rehabilitation agreement in this case more than 100,000 times over a period of several years. Bible also alleges that the conduct at issue is USA Funds' standard operating procedure and that it is continuous and ongoing. These allegations satisfy the relationship-plus-continuity test. See, e.g., *Corley v. Rosewood Care Center, Inc.,* 142 F.3d 1041, 1050 (7th Cir.1998) (relationship-plus-continuity test satisfied where plaintiff alleged defendant systematically overcharged residents at several nursing homes).

* * * *

Footnotes

8 On the RICO claims, USA Funds repeats the same argument it made on Bible's breach of contract claim, contending that she has failed to allege an injury. For the same reasons, we reject this contention. Bible's alleged injury is that she made monthly payments for costs she did not owe, which constitutes a financial loss. Nothing more is required to plead an injury under § 1962(c). See *Haroco, Inc. v. American Nat'l Bank & Trust Co. of Chicago,* 747 F.2d 384, 398 (7th Cir.1984) (holding that plaintiffs' allegations of excessive interest charges resulting from defendants' alleged fraudulent scheme to overstate the prime rate satisfied the injury requirement), *aff'd,* 473 U.S. 606, 105 S.Ct. 3291, 87 L.Ed.2d 437 (1985).