



INTERIOR BOARD OF INDIAN APPEALS

Estate of Floyd Bill (Yakama Nation Credit Enterprise appeal)

60 IBIA 268 (05/06/2015)

Related Board case:
60 IBIA 136

Petition for Reconsideration Denied:
61 IBIA 30



United States Department of the Interior

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INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF FLOYD BILL)	Order Affirming in Part and Reversing
(Yakama Nation Credit Enterprise appeal))	in Part Order Denying Rehearing
)	
)	Docket No. IBIA 12-159
)	
)	May 6, 2015

Yakama Nation Credit Enterprise (Appellant or YNCE) appealed to the Board of Indian Appeals (Board) from an Order Denying Rehearing entered on August 16, 2012, by Administrative Law Judge (ALJ) Thomas F. Gordon in the estate of Floyd Bill (Decedent).¹ The Order Denying Rehearing let stand a December 8, 2011, Order Determining Heirs, which approved payment of Appellant’s claim using the funds in Decedent’s Individual Indian Money (IIM) account as of the date of death, but denied payment of the balance of the claim using “post-death” income, that is, funds accruing in Decedent’s IIM account after his date of death from earnings on trust real property and other sources. Appellant petitioned for rehearing on that part of the Decision limiting the payment of claims to income in Decedent’s IIM account as of the date of death, arguing that the ALJ erred in applying the regulations in effect at the time of the hearing rather than the regulations in effect at the time of Decedent’s death.

In denying the petition for rehearing, the ALJ clarified that Appellant’s claim against Decedent’s estate was in fact two claims for payment of the outstanding balance remaining, respectively, on a Farm Operating Improvements Loan (Farm Loan) entered into in 1984, and on a Refinance Loan, entered into in 1997. Based on the Claim Forms submitted by Appellant, the ALJ concluded that the Farm Loan was secured by a non-trust real estate mortgage and denied the claim on the ground that Appellant must seek payment from non-

¹ Decedent, a.k.a. Floyd Oscar Billy-Harrison, was a Confederated Tribes and Bands of the Yakama Nation (Yakama) Indian. His probate case is assigned Probate No. P000000743IP in the Department of the Interior’s probate tracking system, ProTrac.

Another appeal from a separate order denying rehearing in Decedent’s estate, also issued on August 16, 2012, was filed by Lindy J. Billy-Harrison, and was previously decided by the Board. *See Estate of Floyd Bill* (Lindy J. Billy-Harrison appeal), 60 IBIA 136 (2015).

trust property. The ALJ also denied the claim on the alternate basis that, accepting Appellant's argument that the regulations in effect at the date of death governed claims at probate, those regulations would bar payment of the Farm Loan on statute of limitations grounds because the claim had existed for such a period as to be barred under the applicable State of Washington law. The ALJ maintained the limitation on payment of the Refinance Loan to funds on hand or accrued at time of death. It is from this Order Denying Rehearing that Appellant appeals.

We reverse the part of the Order Denying Rehearing that gave retroactive effect to regulations governing claims payment that went into effect after the date of Decedent's death on the grounds explained in additional detail in our recent decision, *Estate of Esther Tainewasher Bill*, 60 IBIA 237 (2015). We affirm that part of the Order Denying Rehearing disallowing payment of the Farm Loan claim as barred by the state statute of limitations.

Background

Decedent died on February 2, 2000. Order Determining Heirs, Dec. 8, 2011, at 2 (unnumbered) (Decision) (Administrative Record (AR) Tab 6). On November 1, 2001, Appellant submitted a Claim Form covering a Farm Loan, Loan No. C8628, entered into on May 3, 1984, by Decedent and his then spouse, and a Refinance Loan, Loan No. C27042, entered into by Decedent as sole borrower, on February 21, 1997. Claim Form, Nov. 1, 2001 (AR Tab 9). The claim for the balance remaining on the two loans was for \$13,304.64 and \$5,544.68 respectively, for a total claim of \$18,849.32. *Id.*

On the face of the Claim Form, the claim for the Farm Loan bears the description: “** PROVIDED AS INFORMATION ONLY” and “** SECURED CREDITOR – REAL ESTATE MORTGAGE ENCUMBRANCE.” *Id.*; *see also* Order Denying Rehearing at 8 (AR Tab 2). The entry on the Claim Form for the Refinance Loan bears the description “*UNSECURED CREDITOR.” Claim Form. Both claims include the language “*Copy of ‘ASSIGNMENT OF TRUST PROPERTY & POWER TO LEASE.”” *Id.* Appellant submitted a Modified Claim Form on July 17, 2008, which retained these claim descriptions while lowering the amount claimed to \$8,644.76 for the Farm Loan and \$4,986.41 for the Refinance Loan, for a total of \$13,631.17.² Modified Claim Form,

² Following a hearing held in August 2003, during which it became apparent there was insufficient evidence to determine the status of Decedent's five purported children, ALJ William E. Hammett issued an order removing the case from the Office of Hearings and Appeals (OHA) docket, until such time as the Bureau of Indian Affairs (BIA) provided the requested heirship data. Order Striking Case from Docket, January 31, 2005 (AR Tab 9).

July 17, 2008 (AR Tab 9); *see also* Order Denying Rehearing at 8. On October 20, 2011, Appellant filed an Amended Claim Form, recording the amount of the claims as \$11,019.39 for the Farm Loan and \$4,872.31 for the Refinance Loan. Amended Claim Form, October 20, 2011 (AR Tab 9). The affidavit on the Amended Claim Form notes that “there is still due and owing from said decedent to claimant, the total sum of \$13,956.17.” *Id.*; Order Denying Rehearing at 8. The 2011 Amended Claim Form no longer carried the descriptive language, “**Provided as Information Only” and “Secured Creditor – Real Estate Mortgage Encumbrance” for the Farm Loan, and “*Unsecured Creditor” for the Refinance Loan, as was found on both the original claim filed in November 2001, and the modified claim filed in July 2008. Order Denying Rehearing at 8. The reference to an enclosed “Copy of ‘Assignment of Trust Property & Power to Lease” on the two earlier Claim Forms was also absent from the 2011 Amended Claim Form. *See* Amended Claim Form (AR Tab 9).

Both Decedent and his then spouse are listed as co-applicants, or principals, on various documents³ related to the Farm Loan. *See, e.g.*, Promissory Note For a Loan From an Indian Organization, May 3, 1984 (Promissory Note) (AR Tab 9) (stating that “[e]ach maker of this note executes the same as a principal and not as a surety”); Application for Loan, April 12, 1984 (Loan Application) (AR Tab 9) (listing the spouse as an applicant and noting that she is “non-Yakima”). The amount borrowed is listed as \$11,019.39 and repayment was to be made through 60 monthly payments of \$234.13. Promissory Note. The loan was “[t]o be paid from first leases, land sales, timber sales and/or any trust income as soon as available.” *Id.* Based on a 60-month payment schedule beginning 30 days after the advance of funds as provided in the Promissory Note, the loan should have been repaid in May or June 1989, and if unpaid, would have been in default in June or July of that year. *See id.*; Order Denying Rehearing at 10. The Loan Application includes the designation “Real Estate Mortgage (non-trust)” in the section titled “Commitment Order” and is signed by the Authorizing Officer for the Lender, Yakima Nation. Loan Application at 2 (unnumbered). The Loan Application was approved by the Superintendent, presumably of the BIA Yakama Agency, on May 3, 1984. *Id.* The Loan Application provides that, “Title to all property purchased with funds obtained under this application will be taken in [the] name of the applicant, unrestricted, unless otherwise authorized by the Commissioner of Indian Affairs The applicant agrees to pay all taxes lawfully assessed thereon.” *Id.* ¶ 6.

³ From the record, it appears that the executed loan documents for the Farm Loan, Loan No. C8628, consisting of a Consumer Credit Cost Disclosure, Promissory Note, and Application for Loan were provided for the first time with Appellant’s Amended Claim Form, dated October 20, 2011.

The Loan Application also includes a list of measures that the lender may take should the applicant fail to conform to the loan terms, including taking possession of and selling any property purchased with or given as security for the loan. *Id.* ¶ 7. In addition, if the proceeds from sale of property or security are inadequate to repay the loan, the lender may “through the Commissioner, have applied on the indebtedness to the lender, any restricted property, except land, and any trust funds to or accruing to the credit of the applicant, including any income from trust land.” *Id.* There is no indication in the record that the lender ever took possession of or sold property purchased with loan funds, or approached BIA at any time prior to the death of Decedent to seek payment of the loan from Decedent’s trust funds or income from trust land.

The Loan Application states that security for the loan is recorded in a separate “Attachment No. 2” to the application, but that attachment is not included in the record. *See* Loan Application ¶ 10; *see also* Order Denying Rehearing at 8 n.7. The Loan Application requires that “[t]hese securing documents will be recorded in accordance with State law at the expense of the applicant.” Loan Application ¶ 10. The Loan Application also identifies as “additional security” for the loan, “all income from trust land in which the applicant now has or may in the future acquire an interest, and any income from any source and funds from any source accruing to an [IIM] account of the applicant.” *Id.* ¶ 10. Finally, the Loan Application provides that, “The applicant understands and agrees that in the case of death or dissolution, this assignment of income and power to lease⁴ shall constitute a claim against trust funds and income superior to that of the heirs or any claimant of the applicant.” *Id.*

The Refinance Loan was entered into by Decedent as the sole borrower in 1997. Note and Disclosure, Note Number C27042, February 21, 1997 (Note) (AR Tab 9). The amount of the loan was listed as \$4,872.31 and it was to be repaid in three payments ending September 15, 1999. *Id.* The Note identifies the security for the loan as leases and trust income. *Id.* The Note also states on its face that “This note is governed by the laws of the state of WA.” *Id.*

A hearing to determine the heirs and settle the estate of Decedent was held on October 26, 2011. Decision at 1 (unnumbered) (AR Tab 6). Appellant’s claim in the amount of \$13,956.17 was approved for payment in the amount of \$00.02, the total

⁴ The “assignment of income and power to lease” was apparently a reference to BIA Form 5-4720, “Assignment of Trust Property and Power to Lease.” Executed copies of Form 5-4720 for both the Refinance Loan and the Farm Loan were filed with Appellant’s Opening Brief as exhibits to the declaration of Kim Smartlowit. The language quoted here from the Loan Application mirrors that found in Form 5-4720.

amount of funds available in Decedent's IIM account as of the date of death, with the balance of the claim denied. *Id.* at 3 (unnumbered). The ALJ determined that 43 C.F.R. § 30.146 (2009),⁵ which became effective on December 15, 2008, *see* 73 Fed. Reg. 67256 (Nov. 13, 2008), limited payment of claims to trust funds on hand and accrued at the time of Decedent's death, and proscribed the use of income deposited into Decedent's IIM account after the date of death, Decision at 3. Specifically, the ALJ found that the statement in the preamble to the revised regulations that "money generated after the decedent's date of death belongs to the heirs or devisees . . . [and money] that accrues after the date of the decedent's death from trust or restricted property is not available for payment of claims against the estate," constituted a "jurisdictional bar to the use of post-death income to pay the claim." Decision at 3 (unnumbered) (quoting from preamble, 73 Fed. Reg. at 67263).

Appellant filed a timely petition for rehearing, arguing that 43 C.F.R. § 30.146 did not apply to claims against Decedent's estate because that regulation did not go into effect until after Decedent's death. *See* Petition for Rehearing at 2 (AR Tab 5). Instead, Appellant argued that the Board's decision in *Estate of Roy Phillip Watlamatt*, 46 IBIA 60 (2007), made clear that the regulatory provisions that apply to an estate in probate are those that were in effect at the time of a decedent's death. *Id.* Appellant contended that 43 C.F.R. §§ 4.251(d) and 4.252, in effect at the time of Decedent's death, allowed for the use of income from lands remaining in trust to pay allowed claims, and allowed estates to be held open for up to 7 years to satisfy claims of preferred claimants. *Id.* at 2-3.

In reviewing the petitioner's application of the Board's analysis in *Estate of Watlamatt*, the ALJ noted that our decision in that case was issued prior to the 2008 revision of the Department's probate regulations. Order Denying Rehearing at 2. Since that time, he observed, the Board had not consistently considered the decedent's date of death as the defining factor in determining whether regulations that became effective during the pendency of an appeal were to be given effect in ongoing probate proceedings. *Id.* at 2-4. Following the Board's analysis of the effect of such intervening regulations in *Estate of Benson Potter*, 49 IBIA 37 (2009),⁶ the ALJ determined that a similar analysis would be

⁵ The Code of Federal Regulations is published at least annually, with various sets of its 50 titles issued on a quarterly basis. The annual update of Title 43 is published generally in October. References to the "revised regulations" which became effective on December 15, 2008, are therefore to the 2009 release of Title 43 unless otherwise noted.

⁶ *Estate of Potter* concerned a change in regulations that eliminated the notice requirement for reopening an estate closed for more than 3 years. The revised regulations also authorized a probate judge to reopen an estate after 3 years on his own motion. 49 IBIA at 39. After determining that application of the revised regulations did not affect substantive

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prudent here as well. *Id.* at 4. Specifically, the ALJ set out to determine whether application of the revised regulations would change the legal consequences of acts completed before those rules went into effect on December 15, 2008. *Id.* The ALJ denied the petition for rehearing on the basis that the revised regulation, i.e., § 30.146, did not change the legal effect of agreements entered into by Appellant and the Decedent and was therefore appropriately applied in the Decision to limit payment of the Refinance Loan claim to funds available in Decedent’s IIM account as of the date of death. *Id.* at 5.

On closer review of the record, the ALJ also determined that the Farm Loan was secured by a non-trust real estate mortgage, and that YNCE must therefore seek satisfaction of its claim from non-trust property. *Id.* at 9. The ALJ also found, in the alternative, that if the regulations in effect at the date of death, instead of § 30.146, governed the probate proceedings, YNCE’s claim for payment of the Farm Loan would be disallowed because it had been in default for more than 6 years, and was therefore barred by the applicable state statute of limitations. *Id.* at 10.

Standard of Review

On appeal to the Board, the Board reviews factual determinations by the probate judge to determine whether they are substantially supported by the record. *Estate of Sarah Stewart Sings Good*, 57 IBIA 65, 71 (2013); *Estate of Dominic Orin Stevens, Sr.*, 55 IBIA 53, 62 (2012). We review legal determinations and the sufficiency of the evidence *de novo*. *Estate of Sings Good*, 57 IBIA at 72. The burden lies with Appellant to show legal or factual error in the ALJ’s order. *Estate of Josephine J. Palone*, 59 IBIA 49, 52 (2014).

Discussion

We agree with Appellant that our holding in the consolidated case *Estate of Roy Phillip Watlamatt*⁷ applies here and that the regulations governing claims payment in effect at the time of Decedent’s death allow the ALJ to access post-death income from trust lands to satisfy approved claims. We recently reaffirmed that decision in *Estate of Esther*

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law, we explained that “the current reopening provisions undoubtedly apply prospectively to the reopening of an estate on the probate judge’s own motion, which yields the same jurisdictional result [as applying the revised regulations retrospectively]: the probate judge has the authority to consider whether to reopen this estate.” *Id.* at 40.

⁷ This case consolidated three appeals by YNCE, *Estate of Roy Phillip Watlamatt*, *Estate of Peter Smartlowit*, and *Estate of Beverly Ann Tallman*, all of which presented similar factual elements and legal issues as those now before us in the instant appeal.

Tainewasher Bill, 60 IBIA at 243. We therefore reverse that part of the Order Denying Rehearing limiting payment of claims to the balance remaining in Decedent's IIM account as of the date of death. *See* Order Denying Rehearing at 8.

But we agree with the ALJ that YNCE's claim for repayment of the balance due from the Farm Loan is barred by those same regulations. We therefore affirm that part of the Order Denying Rehearing denying payment of the claim for the Farm Loan because the applicable Federal regulation disallowed payment of a claim that would be barred under State law at the date of Decedent's death. *See id.* at 10.

I. The Regulations in Effect as of Date of Death Govern Claims Payment

As was the case in our recent decision in *Estate of Esther Bill*, the threshold legal issue presented in this appeal is whether the regulations in effect at the time of the probate hearing and petition for rehearing govern claims payment, or whether the regulations in force as of the date of Decedent's death are used to decide the rights of the parties to payment of claims. *See* Order Denying Rehearing at 1. Because the regulations as revised in 2008, would impermissibly interfere with the substantive rights of the lender, YNCE, by limiting access to income from the estate following Decedent's death available pursuant to the regulations then in force, their retroactive application is not supportable. *Estate of Esther Bill*, 60 IBIA at 244.

On February 2, 2000, the date of Decedent's death, 43 C.F.R. §§ 4.250-252 (2000)⁸ applied to the submission and consideration of claims at probate. The regulation that determined what property was subject to claims, 43 C.F.R. § 4.252, provided:

Claims are payable from income from the lands remaining in trust. Further, except as prohibited by law, all trust moneys of the deceased on hand or accrued at time of death, including bonds, unpaid judgments, and accounts receivable, may be used for the payment of claims, whether the right, title or interest that is taken by an heir, devisee, or legatee remains in or passes out of trust.

43 C.F.R. § 4.252. As noted by Appellant, this provision remained unchanged until the 2008 regulations. Opening Brief (Br.) at 3. In *Estate of Esther Bill*, we held that applying revised regulation § 30.146 to a claim filed in the estate of a decedent who died before

⁸ Citation to the regulations in effect at the time of Decedent's death will henceforth be to the regulations published in the 2000 edition of the Code of Federal Regulations unless otherwise noted.

§ 30.146 became effective was impermissibly retroactive, and that the regulations in effect when the decedent died governed. 60 IBIA at 243-44. The same is true here. In *Estate of Watlamatt*, the Board interpreted 43 C.F.R. § 4.252 to allow the payment of claims from post-death income generated from trust real property, finding that “[t]he second sentence . . . indicates that the drafters . . . knew how to limit the payment of claims to those funds on deposit ‘at time of death,’ but chose not to similarly limit the payment of claims from income from lands ‘remaining in trust.’” 46 IBIA at 71-72. The Board concluded that “income that accrues after death from real property that remains in trust is subject to [a creditor’s] claims.” *Id.* at 72. The regulations in force in 2000 allowed estates to be held open for up to 3 years for payment of general creditors and for up to 7 years to permit payment of allowed claims of preferred creditors, except the United States. See 43 C.F.R. § 4.251(d). Those regulations also set up a hierarchy of claimants, placing “[c]laims of unsecured indebtedness to a Tribe or to any of its subsidiary organizations,” *id.* § 4.251(a)(3), ahead in priority of “[c]laims of general creditors,” *id.* § 4.251(a)(4). Reading these provisions together, we conclude that Appellant’s claim for payment of the balance remaining on each of the two loans entered into by Decedent, if otherwise allowed, is payable from income that accrues from trust property for up to 7 years after Decedent’s death.

Our conclusion is consistent with the Department’s decision not to apply retroactively changes in probate regulations published in 2001 that ended the practice of holding estates open for as long as 7 years for the payment of claims. See 66 Fed. Reg. 67652 (Dec. 31, 2001). As explained in the preamble to the final rule, which became effective January 30, 2002, post-death income remained available for claims payment.

[I]t is clear that § 4.252 was never intended to limit the funds available for the payment of claims to those accrued at the time of the decedent’s death. In the interim rule, OHA revised § 4.251 to be consistent with the new BIA rules . . . and deleted the provision allowing estates to remain open for up to 7 years for the payment of claims. But consistent with 25 C.F.R. [§] 15.308, funds deposited in the IIM account during the probate process itself are available to pay claims.

Id. at 67654. In response to a comment concerning possible harm to substantive rights from the retroactive application of the recently promulgated interim regulations to pending cases, the Department acknowledged that the law generally disfavors such retroactivity. *Id.* at 67652 (citing *Landgraf v. USI Film Products*, 511 U.S. 244 (1994); *Bowen v. Georgetown University Hospital*, 488 U.S. 408 (1988)). Further, the Department stated, “To avoid such concerns, OHA will apply any new substantive provisions of either the interim or final rule only to cases arising after their respective effective dates, i.e. to cases in which the decedent died after the effective date of the rule.” *Id.*

In *Landgraf*, the Supreme Court acknowledged “the traditional presumption against applying statutes affecting substantive rights, liabilities, or duties to conduct arising before their enactment,” and established a test to determine when a law applies retroactively. *Landgraf*, 511 U.S. at 278, 280. The Board has applied this test in interpreting the scope of newly enacted statutes and regulations. See e.g., *Estate of Potter*, 49 IBIA at 39-41; *Quantum Entertainment, Limited v. Acting Southwest Regional Director*, 44 IBIA 178 (2007). In *Quantum*, the Board summarized the inquiry in the following terms: “if giving effect to a statute would change the legal consequences of acts completed before its effective date, such application will be deemed retroactive, and is impermissible without clear congressional expression to the contrary.” *Quantum*, 44 IBIA at 192-193 (internal quotations omitted).

In the Order Denying Rehearing, the ALJ sought to apply *Landgraf* by asking “whether giving effect to the current [2008] regulations which do not allow the use of income earned or accrued after a decedent’s death to pay claims, would change the legal consequences of acts completed before December 15, 2008.” Order Denying Rehearing at 4 (referring to the effective date of the revised regulations). The ALJ defined the “acts” at issue to include the execution of the loan agreement between YNCE and the Decedent, and found significant that the Note and Disclosure for the Refinance Loan, executed February 21, 1997, “[did] not list any property put forth as security for the loan.”⁹ *Id.* at 4-5. The ALJ determined that the legal effect of the loan as executed would not change if 43 C.F.R. § 30.146 were applied retroactively because the language of the loan gave Appellant no right to post-death income from Decedent’s trust real property. *Id.* at 5. The ALJ found that “[w]hat would change, however, is the ability of this forum to order the payment [of claims] from trust funds accrued or earned after the decedent’s date of death.” *Id.* For that reason, the ALJ concluded that § 30.146 is “jurisdictional in nature,” affects no substantive right of Appellant, and may be applied retroactively to bar Appellant’s recovery

⁹ Appellant addresses this point at some length, relying primarily on language found on the “Assignment of Trust Property and Power to Lease” (Assignment) documents submitted with the Opening Brief and on past Board decisions recognizing such Assignments as creating a security interest in the income of trust property and payable with funds accrued after death, as allowed by the applicable regulations. Opening Br. at 2-5. Apparently, YNCE did not submit copies of the Assignments when it filed its initial claim or either of the two subsequent filings, nor did BIA include the Assignments in the probate record provided to the ALJ. Because the loan documents included in the record and therefore available to the ALJ at the time of his Decision and Order Denying Rehearing provide sufficient support for our analysis, it is unnecessary to comment on any additional significance the Assignments may or may not hold.

from post-death income. *Id.* We disagree with both the determination that the retroactive application of the 2008 regulations would not affect Appellant’s substantive rights, and with the legal conclusion that the revised regulation, 43 C.F.R. § 30.146, is jurisdictional in nature and therefore bars payment of the Refinance Loan claim from trust funds earned or accrued after the date of Decedent’s death.

The ALJ erred by seeming to create a requirement that the loan agreement include a provision authorizing the use of post-death income for the payment of claims. *See* Order Denying Rehearing at 5 (stating that the application of the revised regulations limiting payment to funds on hand at date of death did not have legal consequence “because the loan agreement does not specifically make any reference to the use of post-death trust income”). That is not the case. The probate regulations, specifically 43 C.F.R. § 4.252 as discussed *supra* at 274-75, authorized the payment of allowed claims from funds accruing in a decedent’s IIM account after the date of death. In the case at bar, those same regulations specified that the estate could be held open for up to 7 years for the payment of allowed claims of preferred claimants. The ALJ acknowledged that the claim for the Refinance Loan is an allowed claim. *See* Order Denying Rehearing at 8. Pursuant to the regulations establishing priority of claims, YNCE’s claim would be considered a preferred claim regardless of whether it was secured by trust income through the Assignment or by its own terms¹⁰ because it is clearly a claim of “indebtedness to a Tribe or to any of its subsidiary organizations.” 43 C.F.R. § 4.251(a)(3).

We agree with Appellant that “[g]iving 43 C.F.R. § 30.146 retroactive effect in this case would ‘change the legal consequences of acts completed before its effective date.’” Opening Br. at 8 (quoting *Estate of Potter*, 49 IBIA at 40 n.9). At the time of Decedent’s death, and when Appellant first filed its claims, the regulations provided that his estate could be held open for up to 7 years to pay allowed claims of preferred creditors. 43 C.F.R. § 251(d). Accepting solely for the purposes of this analysis the ALJ’s interpretation of the legal effect of 43 C.F.R. § 30.146, payment of allowed claims under

¹⁰ Our review of the Note and Disclosure for Loan No. C27042, the Refinance Loan, indicates that Decedent expressly offered as security both trust and non-trust assets and income. In the row below the table providing the payment schedule for the loan, after the row heading “**Security:**,” is the following entry: “Collateral securing other loans with the credit union will also secure this loan. You are giving a security interest in your shares and/or deposits in the credit union; and . . . LEASES – TRUST INCOME.” Note and Disclosure at 1 (AR Tab 9). In this usage, “other loans” would include the Farm Loan, which, as discussed *supra* at 270, was secured by a combination of trust and non-trust property, in addition to “any income from any source and funds from any source accruing to an [IIM] Account of the applicant.” Loan Application ¶ 10.

the revised regulation would be limited to “only funds on hand at the decedent’s date of death, or funds accrued at the decedent’s date of death.” Order Denying Rehearing at 8. Retroactive application of this regulation would significantly limit the rights YNCE held when the loan was executed and at the time of Decedent’s death. And as we explained in *Estate of Esther Bill*, the ALJ’s characterization of 43 C.F.R. § 30.146, which defines the property subject to payment of claims, as jurisdictional in nature, Order Denying Rehearing at 5, was incorrect. 60 IBIA at 243-44.

II. Federal Regulations Disallowed Claims That Would be Barred under State Law

Because we find that the regulations in effect at the time of Decedent’s death are to be applied here, we must also consider whether the ALJ was correct, in his alternate conclusion, that the Farm Loan claim would be disallowed under the prior regulations. We conclude that he was and thus affirm the denial of rehearing as regards this claim.¹¹

The probate regulations governing claims payment at the time of Decedent’s death provided:

A claim, whether that of an Indian or non-Indian, based on a written or oral contract, express or implied, where the claim for relief has existed for such a period as to be barred by the State laws at date of decedent’s death, cannot be allowed.

43 C.F.R. § 4.250(e). As stated in the Order Denying Rehearing, the “[State of] Washington’s statute of limitations for bringing an action on a contract is six years.” Order Denying Rehearing at 10. The choice of State of Washington law was justified because both Decedent and the other principal on that loan, his former spouse, resided in Washington when they entered into the loan, *see* Application for Loan (listing address as Toppenish, WA), and Decedent resided in that state at the time of his death, *see* Certificate of Death (AR Tab 10) (showing residence as Toppenish, WA). Section 4.16.040 of the Revised Code of Washington provides in pertinent part:

The following actions shall be commenced within six years:

¹¹ Appellant suggests that because it only sought rehearing on the ALJ’s limitation on the funds available to pay its otherwise allowed claims, the ALJ lacked authority to disallow the Farm Loan claim on rehearing. Opening Br. at 2. We disagree. In its petition for rehearing, Appellant argued that the regulations applicable at the time of death applied to claims payment. The ALJ undoubtedly had authority to consider whether, if Appellant was correct, the claims would nevertheless be barred.

(1) An action upon a contract in writing, or liability express or implied arising out of a written agreement, except as provided for in RCW 64.04.007(2).

Wash. Rev. Code § 4.16.040 (2015).¹² Based on the evidence provided in the record, the ALJ determined that the loan should have been paid off in May or June of 1989. Order Denying Rehearing at 10. Because the Account History for this loan indicated that a balance of \$6,524.08 remained as of January 1, 1992, the ALJ concluded the loan was in default in June or July 1989. *Id.* Under Washington State law, an action seeking enforcement of the terms of the loan would need to have been commenced no later than June or July 1995. Appellant does not dispute that the loan was in default as of mid-1989, nor did it bring forward any evidence that an action to enforce loan repayment had been brought against the borrowers by July 1995.

Nor does Appellant dispute the ALJ's choice of Washington law or the determination that § 4.16.040 is the provision defining the statute of limitations for contracts such as the loans at issue here under Washington law. Instead, Appellant argues that the Yakama Nation and its tribal entity, YNCE, are not subject to state laws. Opening Br. at 16-18. We do not disagree. Rather, we believe the specific Federal regulation at issue adopts the relevant state statute of limitations for contracts memorialized in writing for the limited purpose of resolving claims against the trust estates of individual Indian decedents during probate. By its express terms, it applies to claims brought both by Indians and by non-Indians. 43 C.F.R. § 4.250(e).

In *Estate of Lawrence Ecoffey*, 5 IBIA 85 (1976), the Board considered application of this same regulation to a claim submitted by the appellant, Oglala Sioux Tribal Credit Board (Credit Board). 5 IBIA at 86-87. The Credit Board sought repayment at probate of a loan initiated in February 1960 that was to be repaid in full in January of the following year. *Id.* at 86. The 1960 loan was allegedly secured by an Assignment of Trust Property and Power to Lease approved by the BIA Superintendent. *Id.* Promissory notes were executed after the decedent failed to repay the loan, which the Credit Board argued were also secured by the Assignment. *Id.* The ALJ in that case denied the Credit Board's claim on the ground that the creditor had failed to prove the present validity of the claim or that it was secured by the 1960 Assignment. *Id.* In denying rehearing, the ALJ again found

¹² The exception in the above provision was added in 2012 and requires a lender to initiate a court action within 3 years to collect the remaining debt for loans secured by owner-occupied real property. It does not apply to debts for business, commercial or agricultural purposes. *See* 2012 Wash. Advance Legis. Serv. 185 (LexisNexis). The provision without the exception was in effect in 2000. *Id.*

that the promissory note constituted an unproven, unsecured claim. *Id.* Further, the ALJ noted that the claim had been in default for over 6 years and was therefore barred by the South Dakota statute of limitations. *Id.* at 86-87. The Board affirmed the ALJ's denial of rehearing, finding that "it was within the authority of the [ALJ] to disallow appellant's claim where the evidence shows that a similar claim would be barred under state law as untimely." *Id.* at 87. *See also Estate of Clayton Daniel Prairie Chief Sr.*, 24 IBIA 131, 133 (1993) (remanding for clarification of whether Oklahoma limited the time period for collecting the payments at issue, and noting that, if so, "this limitation should have been applied").

The limited purpose adoption of a state-defined statute of limitations is distinct from, and in no way diminishes, the authority of the Yakama Nation over its members, nor does it otherwise impose state control over contractual relationships within the boundaries of the Yakama Nation. Because we find that payment of the claim for the Farm Loan is disallowed pursuant to 43 C.F.R. § 4.250(e), we do not address the ALJ's conclusion that, based on the record, the loan was secured by a non-trust real estate mortgage and, therefore, YNCE must first seek repayment from non-trust property. Order Denying Rehearing at 9.

Appellant's claim for payment of the Refinance Loan from income accruing in Decedent's IIM account from trust property is allowed under the applicable regulations. The claim for repayment of the balance owed on the Farm Loan is disallowed under these same regulations.

Conclusion

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board reverses that part of the Order Denying Rehearing limiting payment of Appellant's claim to funds on hand as of the date of death, and affirms that part of the Order Denying Rehearing denying payment of the Farm Loan.

I concur:

// original signed
Robert E. Hall
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge