



INTERIOR BOARD OF INDIAN APPEALS

Clear Water Resources, LLC v. Eastern Oklahoma Regional Director,
Bureau of Indian Affairs

46 IBIA 112 (12/05/2007)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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CLEAR WATER RESOURCES, LLC,)	Order Affirming Decision
Appellant,)	
)	
v.)	
)	Docket No. IBIA 05-103-A
EASTERN OKLAHOMA REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	December 5, 2007

Appellant Clear Water Resources, LLC, through David S. Williams, Managing Partner, Indian Owner, appealed to the Board of Indian Appeals (Board) from a July 29, 2005, decision (Decision) of the Eastern Oklahoma Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director denied a request from SpiritBank, of Oklahoma City, for a guaranteed loan in the amount of \$800,000 for Appellant. The Regional Director concluded that the application did not satisfy the applicable regulations, *see* 25 C.F.R. Part 103, based on her findings that certain required documents were missing entirely and that the application was also deficient in other respects. On appeal to the Board, Appellant challenges the Regional Director’s findings, but also contends that if the application was deficient, the Regional Director was required to allow Appellant or SpiritBank to correct those deficiencies before making a decision. We affirm the Regional Director’s decision because (1) the omissions and other deficiencies in the application justified the Regional Director’s decision to disapprove it and (2) the regulations permit, but do not require, BIA to allow an applicant to cure deficiencies in an application before deciding whether to approve or disapprove it.

Background

BIA’s Loan Guaranty, Insurance, and Interest Subsidy Program is governed by 25 C.F.R. Part 103. The regulations establish a variety of requirements for what a lender must include in a loan guaranty application, *see* 25 C.F.R. § 103.12, and requirements for a borrower who is seeking to obtain a guaranteed loan through the lender, *see, e.g., id.* §§ 103.7 (equity requirements for borrowers) and 103.26 (information borrower must supply to its lender). BIA bases its decision whether to approve or reject a loan guaranty

application on many factors, including compliance with the specific requirements of 25 C.F.R. Part 103. *Id.* § 103.16(a).

Appellant, an Oklahoma Limited Liability Company, was formed on January 31, 2002. Appellant's business, as identified in its Operating Agreement, is "the sale, distribution and installation of water treatment products and facilities, and providing consulting services in relation thereto." Operating Agreement § 3.1.

Appellant applied for an \$800,000 loan from SpiritBank. By letter dated April 4, 2005, the Vice President of SpiritBank notified BIA that Appellant "has been approved for an \$800,000 loan with SpiritBank and is to be funded upon BIA approval and guarantee."

Between April and June of 2005, Appellant and SpiritBank submitted documentation to BIA to support SpiritBank's loan guaranty request for Appellant. That documentation included a loan request prepared by Appellant, an Executive Summary prepared by Appellant describing its business and summarizing its loan request, a loan guaranty and interest subsidy request prepared by SpiritBank, and several letters from SpiritBank and Appellant to BIA.

On a date not disclosed in the record, a credit officer at the Southern Plains Regional Office, BIA, prepared a draft credit memorandum that concluded that the loan guaranty request was not complete and that the lender had not performed due diligence. The draft memorandum recommended that the loan guaranty request be denied. Attached to the credit memorandum are detailed handwritten notes about the loan request.¹

On July 29, 2005, the Regional Director issued a decision in which she denied SpiritBank's request for a BIA loan guaranty for a loan to Appellant. The Regional Director found that the following documents were missing from the application and were required as part of the loan guaranty package:

- (1) Appellant's completed loan application, *see* 25 C.F.R. § 103.12(b);
- (2) SpiritBank's independent credit analysis of Appellant's business, repayment ability, and loan collateral, *see id.* § 103.12(d);

¹ Apparently an earlier credit memorandum, prepared by another BIA credit officer, Jim Hummingbird, had recommended approval of the application. Hummingbird's memorandum does not appear in the record. The Regional Director invokes the deliberative process privilege to withhold Hummingbird's memorandum, and Appellant does not challenge the Regional Director's assertion of privilege.

- (3) Credit reports for each of the owners, *see id.* § 103.12(e);
- (4) A copy of SpiritBank's commitment letter to Appellant indicating amount pre-approved for, purpose, interest rate, payment schedule, security, collateral, terms, conditions, and insurance requirements, *see id.* 103.12(f);
- (5) SpiritBank's good faith estimate of loan-related fees and costs it planned to charge Appellant, *see id.* 103.12(g);
- (6) Proposed draw requirements, insurance and bonding requirements for construction projects, and proposed work inspection procedures, *see id.* 103.12(h);
- (7) Documentation of compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*;
- (8) Current financial data (2004), *see* 25 C.F.R. § 103.26(g); and
- (9) Personal financial statements for each of the owners.

In addition, the Regional Director concluded that the documentation that was submitted was deficient in several respects, based on the following findings:

- (1) The purpose of the business is not clear: The loan guaranty request identified the purpose of the loan as for a "non-chemical water treatment facility," but the Executive Summary and Appellant's loan request to SpiritBank indicated that the purpose was for working capital, and did not include construction as a use of loan funds;
- (2) The business plan purports to create 40 plus jobs in Maysville, but there is no discussion of creating jobs for Indian individuals except in construction;
- (3) The application does not show that Appellant is projected to have 20 percent equity in the business immediately after the loan is funded, *see* 25 C.F.R. § 103.7;
- (4) A complete, detailed description of use of funds for the loan proceeds is not included;
- (5) SpiritBank did not perform due diligence by checking and verifying the information contained in Appellant's loan application; and
- (6) A review of Appellant's business plans indicates that the loan will be paid off in the second year of business, and that therefore "a guarantee and interest subsidy is not justifiable," Decision at 2.

Appellant appealed to the Board, and Appellant and the Regional Director filed briefs.² On appeal, Appellant contends that the Regional Director erred in concluding that its loan guaranty application was deficient. Appellant responds to each of the Regional Director's findings, identifying the documentation that Appellant contends complies with the corresponding regulatory requirement in 25 C.F.R. Part 103. Appellant also argues that even assuming the loan guaranty application was deficient, the Regional Director erred because she was required to allow Appellant or SpiritBank to correct those deficiencies before making a decision.

Discussion

I. Introduction

The regulations governing BIA loan guarantees impose several specific objective requirements related to loan guaranty applications, such as the submission of certain specific documents. *See, e.g.*, 25 C.F.R. § 103.12. Assuming that the minimum objective requirements of the regulations have been satisfied, the decision whether to approve a request for a loan guaranty is committed to the discretion of BIA. *See Blackfeet National Bank v. Director, Office of Economic Development*, 34 IBIA 240, 241 (2000). An appellant bears the burden of showing that BIA committed error or otherwise did not properly exercise its discretion. *See Anderson v. Acting Southwest Regional Director*, 44 IBIA 218, 225 (2007). In reviewing discretionary decisions, the Board may not substitute its judgment for that of BIA. *Polzer v. Minneapolis Area Director*, 20 IBIA 158, 161 (1991). The Board's role is limited to determining whether BIA gave proper consideration to or complied with all legal prerequisites in exercising its discretionary authority and whether BIA's decision is supported by the record and is adequately explained. *See Kent v. Acting Northwest Regional Director*, 45 IBIA 168, 174 (2007); *Skagit County v. Northwest Regional Director*, 43 IBIA 62, 63 (2006).

² After briefing was concluded, the Board received a letter from Appellant suggesting that it would be "helpful" for the Board to have an independent review conducted by a "totally disinterested" Regional Director's office. Letter from Appellant to Board, Mar. 29, 2006. The Regional Director responded that referral to another regional office was inappropriate as a matter of law because, pursuant to 43 C.F.R. § 4.331, appeals from Regional Director's decisions are directed to the Board, not other regional offices. The Regional Director also noted that there was no evidence of bias in the record. We find no legal basis or justification for the Board to refer this matter to another Regional Director and therefore we reject Appellant's suggestion.

We conclude that the omissions and other deficiencies in the application justified the Regional Director's decision to disapprove it. We reject Appellant's argument that the Regional Director was required to allow Appellant or SpiritBank to supplement the loan guaranty request before issuing a decision.

II. Missing Documentation and Other Deficiencies in the Loan Guaranty Application

The Regional Director identified fifteen deficiencies in the loan guaranty application. These deficiencies can be divided into two broad categories: deficiencies based on missing documentation and deficiencies based on submitted documentation.

A. Missing Documentation

The Regional Director identified several types of documents that were missing from SpiritBank's loan guaranty request, which were required by the applicable regulations at 25 C.F.R. Part 103. We conclude that missing documentation justified the Regional Director's decision to deny the loan guaranty request. Although we conclude that in a few instances the Regional Director erred in finding that certain documents were missing, those errors do not require or warrant a remand because the remaining documentation that is absent rendered the application deficient as a matter of law. These omissions precluded approval and justified the Regional Director's denial of the application. We address each of Regional Director's findings in turn.

First, the Regional Director found that SpiritBank did not submit Appellant's complete loan application. *See* 25 C.F.R. § 103.12(b). The administrative record, however, contains a copy of Appellant's loan application, which does not appear to be incomplete. Neither the Regional Director's decision nor her brief on appeal explain why she determined that the loan application was incomplete. Therefore, we conclude that the Regional Director's decision with respect to this requirement is not supported or adequately explained.

With respect to the Regional Director's next finding, we agree that SpiritBank did not submit a copy of its "independent credit analysis" of Appellant's business, repayment ability, and loan collateral, as required by 25 C.F.R. § 103.12(d). Appellant asserts on appeal that a letter from SpiritBank to BIA dated April 25, 2005, satisfied this requirement. In the letter, SpiritBank stated that "[t]o our knowledge, [Appellant] and its principal have no delinquent federal taxes," and that "[t]he primary source of repayment will be cashflow associated with small communities/municipalities needing water treatment facilities." Letter from SpiritBank to BIA Branch of Credit, Eastern Oklahoma Region, Apr. 25, 2005, at 1. Appellant contends that this statement satisfies the requirements of subsection 103.12(d).

We disagree. The letter is not an analysis of Appellant's business, repayment ability, and loan collateral, much less does it inform BIA of the sources consulted. For example, SpiritBank's letter does not purport to review Appellant's business from a credit perspective, analyze Appellant's ability to repay the loan proceeds, or discuss what if any collateral will be used to secure the loan. *See, e.g.*, 25 C.F.R. § 103.16(a) (loans must be secured "to the extent that collateral is available").

We also uphold the Regional Director's finding that SpiritBank failed to submit "an original report from a nationally-recognized credit bureau, dated within 90 days of the date of the lender's loan guaranty application package, outlining the credit history of the borrower," as required by 25 C.F.R. § 103.12(e). No credit reports from a nationally-recognized credit bureau appear in the record. We reject Appellant's assertion that SpiritBank's statement that "we know of no adverse credit item impacting [Appellant]" suffices as an "original report from a nationally-recognized credit bureau."³

The Regional Director also found that SpiritBank did not submit a copy of its commitment letter to Appellant, showing, at a minimum, the proposed loan amount, interest rate, schedule of payments, security, and lender's terms and conditions, as required by 25 C.F.R. § 103.12(f). Her finding is supported by the record. Appellant contends that SpiritBank's Loan Guaranty Request, dated April 25, 2005, and prepared on a BIA form, satisfies this requirement. We disagree. A commitment letter is defined as "[a] lender's written offer to grant a . . . loan." Black's Law Dictionary 289 (8th ed. 2004). Appellant's proffered document is a loan guaranty request to BIA on a BIA form. It is not a loan offer to Appellant. Furthermore, even if the loan guaranty request could somehow be construed as a "commitment letter," it does not identify the schedule of payments, security, or the lender's terms and conditions, as required by subsection 103.12(f). *Cf.* 66 Fed. Reg. 3861, 3863 (Jan. 17, 2001) (rejecting comments that lender should not have to issue a commitment letter until after BIA has approved the loan because "BIA . . . has no substitute for having before it the lender's blueprint for how it thinks a given loan will work").

Next, the Regional Director found that SpiritBank did not comply with 25 C.F.R. § 103.12(g), which requires the lender to submit its "good faith estimate of any loan-related

³ By fax dated April 20, 2005, a BIA employee advised Appellant that a "statement regarding the credit status" would be sufficient in lieu of a credit report. However, the regulations clearly require a credit report from a nationally-recognized bureau, and it is well-established that BIA is not bound by erroneous statements by its employees. *Lambert v. Rocky Mountain Regional Director*, 43 IBIA 121, 125 (2006); *Danard House Information Services Div., Ltd. v. Sacramento Area Director*, 25 IBIA 212, 218 (1994).

fees and costs.” Appellant does not dispute the Regional Director’s finding that it did not submit this information but instead asserts, for the first time on appeal and without any supporting documentation from SpiritBank, that SpiritBank will charge Appellant a 1% origination fee plus the 2% BIA Loan Guaranty fee and \$250 processing fee. *See* Opening Brief at 5. The Board declines to consider this assertion because it is raised for the first time on appeal, *see Arizona State Land Dep’t v. Western Regional Director*, 43 IBIA 158, 165 (2006), and even if the information were properly supported, the Regional Director cannot be faulted for failing to consider something that was not presented to her prior to her decision.

The Regional Director determined that Appellant did not submit (1) documentation required by 25 C.F.R. § 103.12(h), which establishes additional requirements for applications for construction loans, including insurance and bonding requirements and proposed draw requirements, and (2) NEPA documentation. It appears that the Regional Director’s findings were based on a determination that the loan proceeds would be used to finance construction. Appellant states on appeal that the loan proceeds were not intended for construction. *See* Opening Brief at 5. Even accepting that clarification, however, it was not unreasonable for the Regional Director to find that this documentation was required as part of SpiritBanks’s loan guaranty request because the request identified the purpose of the loan as construction of a non-chemical water treatment facility. Again, the Regional Director cannot be faulted for relying on incorrect or unclear information provided by SpiritBank or Appellant.

Additionally, the Regional Director found that Appellant had not submitted 2004 financial data. Subsection 103.26(g) of 25 C.F.R. requires that borrowers submit a “current financial statement.” The administrative record, however, contains a balance sheet, dated December 31, 2004, that summarizes Appellant’s assets and liabilities, and a general ledger for 2004. Thus, it appears that Appellant complied with the “financial statement” requirement for 2004. *See* Black’s Law Dictionary 663 (defining financial statement as “[a] balance sheet, income statement, or annual report that summarizes an individual’s or organization’s financial condition on a specified date or for a specified period by reporting assets and liabilities”). To the extent that the Regional Director may have intended to find the financial statement *deficient*, rather than missing entirely, she should have explained that in her decision. Therefore, we conclude that with respect to this requirement, the Regional Director’s finding is not supported by the record or adequately explained. *Cf. Cupps v. Acting Anadarko Area Director*, 23 IBIA 142, 144 (1993) (BIA should not have disapproved application for failure to submit a particular tax return when it had not specifically requested that tax return).

Finally, with respect to missing documentation, the Regional Director found that Appellant had not submitted the current financial statements for each of the owners. Appellant asserts that it submitted the financial statement for its principal owner, which was all that SpiritBank had required Appellant to submit for purposes of the loan. Subsection 103.26(g) of 25 C.F.R., which requires a borrower to submit current financial statements, does not specifically require that a borrower's owners submit personal financial statements. If the Regional Director believed it was appropriate to require such documentation in this case, she should have requested it. *See* 25 C.F.R. § 103.14; *Pourier v. Acting Aberdeen Area Director*, 19 IBIA 266, 270 (1991). Therefore, we conclude that the Regional Director's factual finding, while apparently correct, did not provide a basis — in the absence of a specific request and further explanation — to reject the loan guaranty application on the basis of this missing documentation.

In summary, we conclude that although the Regional Director overstated the number of missing documents, the documents that were missing precluded approval, and therefore justified, the Regional Director's decision to deny the loan guaranty request.

B. Deficiencies in Documentation that was Submitted

The Regional Director also found deficiencies in the information contained in the documentation that SpiritBank or Appellant did submit. She determined that much of the information submitted by Appellant was confusing, was insufficiently detailed, and did not further the purposes of the guaranteed loan program. The Regional Director found, for example, that information provided about the purpose of the loan and the business was confusing: SpiritBank's Loan Guaranty request identified the purpose of the loan as for a "nonchemical water treatment facility," but the Executive Summary and Appellant's loan request to SpiritBank indicated that the purpose was for working capital, and did not include construction as a use of loan funds. Furthermore, the Regional Director questioned whether Appellant's business would contribute to the economy of an Indian reservation, as is required by 25 C.F.R. § 103.4(a). The Regional Director also determined that Appellant had not shown that it is projected to have at least 20 percent equity in the business being financed immediately after the loan is funded. In addition, the Regional Director determined that SpiritBank had not performed due diligence by checking and verifying the information contained in Appellant's loan application. Finally, the Regional Director determined that Appellant's loan application did not indicate an excessive risk requiring a guaranty and interest subsidy because Appellant's projected financials indicate that the loan will be paid off in the second year of business.

We conclude that Appellant has not met its burden of showing that any of these grounds were unreasonable or not supported by the evidence.

On appeal, Appellant agrees that the statement on its loan guaranty request to BIA — that the purpose of the loan was for “a non-chemical water treatment facility” — was a “mistake,” but asserts that BIA Loan Specialist Jim Hummingbird “understood the purpose of the loan” and recommended its approval. Opening Brief at 2. Appellant also asserts that its use of loan proceeds information was sufficiently detailed. Given conflicting information about the purpose of the loan in the information before the Regional Director and the lack of detail in the breakdown of the use of loan funds, we conclude that it was not unreasonable for the Regional Director to find the loan guaranty request deficient on this ground. As to whether or not Hummingbird understood the purpose of the loan and recommended its approval, the Regional Director was justified in relying on the documentation submitted by Appellant and SpiritBank. Discretion to issue a final decision on the loan guaranty request is vested in the Regional Director.

Appellant also contends that the Regional Director erred in finding that Appellant’s business plan purported to create 40-plus jobs in Maysville but lacked a discussion of jobs for Indian individuals except in construction. Appellant argues that it never purported to create 40-plus jobs in Maysville, and also notes that in its Executive Summary, it pledged to hire Native American employees not only for construction, but also to manage and run water treatment facilities that it will own and operate. Appellant also contends that its water treatment facilities will benefit Native American communities economically.

We agree with Appellant that the record does not contain a pledge by Appellant to create jobs in Maysville. We also agree that in its Executive Summary, Appellant stated that it would utilize Native American companies and employees in executing future projects and that its “objective” is to “team” with tribes to bring water treatment facilities to the reservations. Executive Summary at 7. Appellant concedes, however, that it does not yet have any contracts with Indian tribes, stating only that it is in “contact with various Indian tribes directly and/or indirectly . . . in making proposals for water . . . treatment facilities.” Reply Brief at 5.

It is Appellant’s burden to show that its “business . . . contribute[s] to the economy of an Indian reservation or tribal service area.” 25 C.F.R. § 103.4(a). The evidence in the record makes it speculative at best that Appellant’s business will benefit tribal economies.⁴ *See Nagel v. Acting Phoenix Area Director*, 25 IBIA 174, 177 (1994) (Even assuming that borrower intended to carry through with his stated intention that he would employ

⁴ Appellant does not contend, and it is not apparent on the record, that the contracts it has had to date — with, e.g., Quartz Mountain and the city of Lindsay, *see* Executive Summary at 12, 15 — contribute to any reservation or tribal service area economies.

qualified Indians and deal with Indian vendors and subcontractors whenever possible, he has failed to show that his planned activities would have anything more than a minimal impact on the reservation economy). Thus, while it appears that the Regional Director erred in her specific findings regarding the number and nature of the jobs that Appellant represented it would create, Appellant has not demonstrated that the errors were material or that the Regional Director acted unreasonably in questioning whether Appellant's business will contribute to the economy of an Indian reservation. *See Buckles v. Aberdeen Area Director*, 24 IBIA 13, 15 (1993).

The Regional Director also determined that Appellant had not shown that there will be at least 20 percent equity in the business immediately after the loan is funded, as required by 25 C.F.R. § 103.7. Equity is defined in the regulations as

the value, after deducting all debt, of the borrower's tangible assets in the business being financed, on which a lender can perfect a first lien security interest. It can include cash, securities, or other cash equivalent instruments, but cannot include the value of contractual options, the right to pay below market rental rates, or similar rights if those rights: (1) Are unassignable; or (2) Can expire before maturity of the loan.

25 C.F.R. § 103.44. Appellant argues that the record reflects "a total cash contribution in capital to [Appellant] of \$178,000 . . . which reflects a 22 percent equity in relation to an \$800,000 loan guaranty." Opening Brief at 3. The record contains several typed tables submitted by Appellant to support the \$178,000 "cash contribution" or "cash investment" made to Appellant by its owners. However, there is no independent documentation either of the actual existence of this amount (through bank statements, independent audit, or other confirmation) or the likelihood of this amount being available immediately at the time the loan is funded.⁵

⁵ Appellant and the Regional Director both apparently construe the 20 percent equity requirement to mean equity equivalent to 20 percent of the loan amount. *But cf. Shawnee Products, Inc. v. Acting Anadarko Area Director*, 32 IBIA 6, 8 (1998) (concluding that "20 percent in the business being financed" was almost certainly intended to mean the same thing as 'equity equal to 20 percent of the total cost of a new enterprise, or 20 percent of the total cost of expansion of an existing enterprise'). Even assuming that the loan amount is the correct benchmark in this case, it does not appear that Appellant satisfies the 20 percent equity requirement. According to the accounting submitted by Appellant, the \$178,000 cash investment by the owners was provided over the years 2003 and 2004

(continued...)

In addition, Appellant argues that if “the applicant is required to have 20% in cash or cash equivalent upon hand at the time of the [loan] closing then we need to have that as a condition prior to closing.” Reply Brief at 4.⁶ However, the regulations require an affirmative showing *prior* to closing that Appellant is projected to have 20 percent equity in the business available immediately after the loan is funded. Because Appellant has not met this burden, we affirm the Regional Director’s conclusion on this issue.

Appellant also asserts that SpiritBank did perform due diligence, Opening Brief at 6, and that SpiritBank required a guaranty because of the excessive risk associated with a working capital loan, *see id.*, but Appellant provides no further explanation or supporting documentation. Appellant does not address the Regional Director’s finding that Appellant had specifically projected that the loan would be paid off in the second year, thus appearing to negate a need for a guaranty. Simple disagreement with or bare assertions concerning BIA’s decision are insufficient to carry Appellant’s burden of showing that the Regional Director did not properly exercise her discretion. *Arizona State Land Dep’t*, 43 IBIA at 160.

We conclude that Appellant has not carried its burden of showing that the Regional Director’s decision to deny the application on these additional grounds was unreasonable or not supported by the evidence.

III. BIA’s “Duty” to Withhold a Decision to Allow Supplementation of the Application

Appellant contends that, even assuming its application was deficient, BIA was required to allow Appellant or SpiritBank to correct the application before BIA disapproved

⁵(...continued)

during which years Appellant had a combined negative net income of \$68,559.79. The negative net income thus apparently reduced the owners’ cash investment to \$109,440.21 by the end of 2004, which is only 13.7% of the \$800,000 loan amount. *See* Tab 5 of the Administrative Record. In addition, it appears that Appellant’s outstanding accounts payable of \$72,400 further reduces its equity. *See* 25 C.F.R. § 103.44 (must subtract “all debt” as part of the determination of equity); *Danard House*, 25 IBIA at 219-220.

⁶ Appellant also argues that it has assets and capital that significantly exceed 20% of the loan amount. However, the record does not reflect any assets or capital that qualify as “equity” within the meaning of section 103.44, i.e., upon which a lien may be perfected. Instead, such assets are vaguely identified as “advances on contract,” suggesting a repayment obligation, while capital is vaguely identified as “labor.” *See* Tab 7 of the Administrative Record (balance sheets).

it. Appellant relies on subsection 103.16(b), which provides that “[i]f the guaranty or insurance application is incomplete, BIA may return the application to the lender, or hold the application while the lender submits the missing information.” Appellant asserts that at no time was it or SpiritBank contacted with a request for missing documents or for clarification of its application, and that SpiritBank “would have furnished this information to the BIA in the form . . . requested if the BIA had contacted them.” Reply Brief at 3.

We reject Appellant’s argument that BIA was required to afford it an opportunity to supplement its application once it determined that the loan guaranty application was not complete. Section 103.16(b) provides that, if an application is incomplete BIA “*may* return the application . . . or hold the application.” (Emphasis added.) It does not provide that BIA “will” or “must” solicit supplementation. Part 103 of 25 C.F.R. establishes clear requirements for borrowers and for lenders. SpiritBank and Appellant did not comply with these requirements. Subsection 103.16(a) provides that BIA will evaluate a loan guaranty application in part on compliance with Part 103. In this case, BIA determined that the loan guaranty application did not satisfy the requirements of Part 103, and acted within its discretion in denying the application. BIA was not required to wait to make a decision on the application until Appellant submitted a complete and nondeficient application.⁷

We conclude that Appellant has not met its burden of showing that the Regional Director failed to exercise her discretion appropriately in denying the loan guaranty request.

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 affirms the Regional Director’s July 29, 2005, decision.

I concur:

 // original signed
Steven K. Linscheid
Chief Administrative Judge

 // original signed
Debora G. Luther
Administrative Judge

⁷ Although we conclude that BIA was not *required* to provide Appellant an opportunity to supplement its application, we note that had the Regional Director, before issuing a formal decision, communicated to SpiritBank the nature of the deficiencies she believed precluded or warranted disapproval, it would, at a minimum, have narrowed the issues to be addressed in the decision and the issues in any subsequent appeal. *See Navajo Precision Built Systems, Inc. v. Acting Navajo Area Director*, 22 IBIA 153, 157 (1992).