RUBY SUN GOES SLOW SIMPSON, Appellant	:	Order Docketing and Dismissing Appeal as Premature
v.	:	Docket No. IBIA 94-151-A
BILLINGS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	July 27, 1994

Appellant Ruby Sun Goes Slow Simpson seeks review of the failure of the Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), to respond to her May 8, 1994, notice of appeal from a letter issued by the Superintendent, Crow Agency, BIA (Superintendent). The Superintendent's April 22, 1994, letter concerned a 1984 loan from the Crow Tribal Revolving Loan Program to appellant, and problems with the loan.

The materials submitted by appellant indicate that a hold was placed on her Individual Indian Money (IIM) account, and that funds were transferred from that account, apparently to the Tribal Credit Committee. Although the Superintendent's letter stated that no funds have been transferred since April 1992, appellant alleges that a hold remains on the account. Her appeal sought to have that hold removed.

Appellant states that she submitted a copy of her notice of appeal to both the Superintendent and the Area Director. The materials she has sent to the Board include two separate follow-up letters to the Area Director and the Billings Area Office, both dated May 31, 1994. Appellant alleges that she has received no response from the Area Director, although she received a letter dated May 20, 1994, from the Superintendent, stating that no appealable decision had been rendered.

The Board's usual jurisdiction is to review decisions rendered by BIA Area Directors. However, the failure of an Area Director to render a decision can be appealed to the Board under the procedures established in 25 CFR 2.8. Section 2.8 provides:

> (a) A person or persons whose interests are adversely affected, or whose ability to protect such interests is impeded by the failure of an official to act on a request to the official, can make the official's inaction the subject of appeal, as follows:
>
> (1) Request in writing that the official take the action originally asked of him/her;

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(2) Describe the interest adversely affected by the official's inaction, including a description of the loss, impairment or impediment of such interest caused by the official's inaction;

(3) State that, unless the official involved either takes action on the merits of the written request within 10 days of receipt of such request by the official, or establishes a date by which action will be taken, an appeal shall be filed in accordance with this part.

(b) The official receiving a request as specified in paragraph (a) of this section must either make a decision on the merits of the initial request within 10 days from receipt of the request for a decision or establish a reasonable later date by which the decision shall be made, not to exceed 60 days from the date of request. If an official establishes a date by which a requested decision shall be made, this date shall be the date by which failure to make a decision shall be appealable under this part. If the official, within the 10-day period specified in paragraph (a) of this section, neither makes a decision on the merits of the initial request nor establishes a later date by which a decision shall be made, the official's inaction shall be appealable to the next official in the process established in this part.

Section 2.8 provides specific procedures to be followed in order to appeal from the inaction of a BIA official. The procedure requires the person aggrieved to file a written request for decision with the BIA official whose inaction is the subject of controversy, and to state that unless action is taken within 10 days, an appeal will be taken. Only after this procedure is followed is there a right to proceed to a higher official. Although appellant's filings can be interpreted as meeting most of the requirements under section 2.8, they do not show compliance with the requirements of section 2.8(a)(3). Because appellant has not complied with all of the procedural requirements, this appeal is premature. See Norton v. Fort Hall Agency Superintendent, 19 IBIA 278 (1991).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the inaction of the Billings Area Director is dismissed without prejudice as being premature. If appellant complies with all of the procedural requirerents of 25 CFR 2.8, and the Area Director still does not render a decision, or renders a decision adverse to her, appellant may appeal to the Board.

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Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge

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