

FORMAL TECHNICAL ASSISTANCE MEETINGS

25 C.F.R § 83.10(j)(2)

(2) In addition, the Assistant Secretary shall, if requested by the petitioner or any interested party, hold a formal meeting for the purpose of inquiring into the reasoning, analyses, and factual bases for the proposed finding. The proceedings of this meeting shall be on the record. The meeting record shall be available to any participating party and become part of the record considered by the Assistant Secretary in reaching a final determination.

The purpose of this formal meeting is to give the petitioner and interested parties an opportunity to ask the Office of Federal Acknowledgment (OFA) researchers questions on the proposed finding and the technical bases for that finding in an on-the-record session. It is designed to promote the exchange of information between the OFA researchers who were most involved in the decision and the petitioner and interested parties. The technical assistance review is designed to be beneficial to understanding the finding and is not an adjudicatory hearing. As such, it is not meant to rule on arguments, evaluate new evidence, or argue over issues.

HOW DOES A FORMAL MEETING UNDER 83.10(j)(2) DIFFER FROM TECHNICAL ASSISTANCE UNDER 83.10(j)(1)?

A formal meeting differs from informal technical assistance reviews in three ways:

- (1) The meeting will be open to the public,
- (2) The meeting will be on the record, and
- (3) The meeting will follow a prepared agenda.

The technical assistance given will not be different from that given under 83.10(j)(1) in informal TA meetings.

WHAT IS THE TIME FRAME OF THE TECHNICAL ASSISTANCE REVIEW?

Since the purpose of the formal meeting is to inquire into the reasoning, analyses, and factual bases for the proposed finding, in order for petitioners and interested parties to better understand and respond to it, a formal meeting, if desired, must be requested in a timely fashion. Requests for a formal meeting should be made within 60 days of the issuance of the proposed finding in order to permit both scheduling of the meeting and timely notice to other parties. This recommended schedule will leave time within the 180-day comment period for the parties to respond to the technical assistance offered during the meeting.

The OFA will not automatically delay the comment period to grant a formal TA review, especially if

such a delay would delay the finding. The OFA will not allow last-minute requests for a formal TA meeting to be used as a delaying tactic on the part of a petitioner or interested party. In cases where a request would delay a finding, it is at the discretion of the OFA whether or not to comply with the request.

HOW DOES A PETITIONER OR INTERESTED PARTY REQUEST A FORMAL MEETING?

If you are a petitioner or “interested party,” as defined in the regulations in section 83.1, you may request a formal meeting from the OFA after the Assistant Secretary - Indian Affairs issues a proposed finding. The request must include a proposed agenda of topics that you would like discussed during the formal TA review meeting and must identify those individuals who will be asking questions. No requests will be accepted without an accompanying agenda.

IS A FORMAL TA MEETING REQUIRED?

No formal meeting will be held unless the petitioner or interested party requests one, and only one formal TA meeting will be held for each proposed finding. Both the petitioner and the interested parties may participate at their own request.

WHO MAY REQUEST A FORMAL TA MEETING?

Either the petitioner or the interested party may request a formal TA meeting and submit a proposed agenda. After the first request is received, the other interested parties (or the petitioner) in the case will be notified by the OFA within ten working days that a formal TA session will be held.

HOW DOES A PETITIONER OR INTERESTED PARTY REQUEST TO PARTICIPATE IN A FORMAL TA REVIEW SESSION REQUESTED BY ANOTHER?

When you receive notice that a formal TA review has been requested, you may request to participate by sending the OFA a written request and proposed agenda. Such a request to participate must be received in writing 21 days after the notification is sent to the parties involved, including the petitioner. If no agenda is submitted with the request to participate, only follow-up questions are permitted.

WHY IS AN AGENDA REQUIRED?

The agenda is needed so that the OFA may not only determine which government researchers should be present and what research materials would be necessary, but also anticipate the length of the session. The purpose of the agenda is to enable the OFA staff to set a schedule and plan the meeting.

DOES THE AGENDA LIMIT THE TOPICS WHICH WILL BE DISCUSSED?

Petitioners and interested parties who wish to participate in the formal meeting must submit a proposed agenda. The OFA researchers may also place items on the agenda so that the bases of the finding are fully explored on the record. The final meeting agenda will be prepared by the OFA. Requiring an agenda is not meant to unduly limit the discussion to issues placed on the meeting agenda ahead of time. Issues might come up during the review itself which should be discussed. A time will be allowed at the end of the formal review to discuss new topics which are brought up during the meeting but were not on the original agenda. The moderator will decide which new topics may be placed on the meeting agenda during the TA review. All participants in the formal TA meeting will be sent a meeting agenda at least 14 days prior to the meeting date.

WHERE WILL THE FORMAL TA REVIEW MEETING BE HELD?

All formal TA review meetings will be held in the Department of the Interior in Washington, D.C., unless there are compelling reasons to meet elsewhere. Compelling reasons would include the availability of evidence, determined by the OFA to be available only in a location other than the Interior Department, or other technical considerations. Compelling reasons will not include the convenience of the petitioner, their researchers or others who would like to attend the session, or publicity considerations. Arrangements for the meeting room and transcript will be made by the OFA staff. Petitioners and interested parties who have submitted an agenda and are participants in the formal meeting will be provided one free transcript.

WHO MAY ATTEND THE FORMAL TA REVIEW MEETING?

The TA review is a public meeting. The OFA will notify "interested parties" and/or the petitioner when they receive a letter and agenda requesting a formal TA meeting from any party. Only one formal TA meeting will be held. Participation in the formal TA review meeting is restricted to the petitioner and to any interested parties who have requested to participate. The public may attend but not participate. In the event of widespread public interest in attending the meeting, the OFA may limit the attendance at the session through advanced booking, lottery, pooling or similar types of procedures. However, the OFA will attempt to make the proceedings as open as possible to the general public, the press, and local and state officials.

WHO IS ALLOWED TO ASK QUESTIONS TO OFA STAFF?

Petitioners and interested parties through their designated spokesmen may ask questions. The moderator may recognize other speakers from the petitioner and interested parties not identified on the agenda at his or her discretion. The general public may not ask questions during the formal TA review.

The general public is welcome to ask questions in informal discussions with the OFA researchers or

through correspondence at any time under 83.10 (j)(1).

WHAT WOULD HAPPEN AT A FORMAL TA MEETING?

The formal TA meeting will be held on the record. The OFA director or an official designated by the director will act as moderator of the session. The meeting will begin with an overview by the OFA researchers of the government's proposed finding. Questions will then be posed by the speaker representing the petitioner or interested party whose agenda and request for the meeting was received first in the OFA, followed by other participants in the order in which their letters of request with agenda were received in the OFA. A time for non-agenda issues, newly raised in the session, will be provided at the end of the session. A final question period will be reserved for the petitioner.

WHAT IS THE MODERATOR'S ROLE?

It is the moderator's job to maintain order, to keep the discussion moving in a timely way, to make sure that the agenda is followed, and to referee any disagreements which might arise, including when to change a line of questioning. The moderator must make sure that the primary goal of information exchange is preserved, and that argumentative or bullying questioning does not occur and hamper the free-flow of information. The moderator must also make sure that the questions are answered as completely and clearly as possible by the government researchers.

WHAT ARE THE RULES OF THE MEETING?

The meeting is not meant to be a legal proceeding or deposition, with rules of evidence, cross examination, etc. Rather, the meeting is to permit inquiry into the bases of the decision. The rules of the meeting are determined by the moderator in order to enhance communications concerning the technical aspects of the proposed finding. The topics discussed must be focused on research questions. The meeting is not a place for speeches, grandstanding, or legal argument. The moderator will take the necessary steps to stop any behavior or activity which interferes with discussion, explication, and clarification of research issues.

WILL FEDERAL LAWS CONCERNING PRIVACY BE FOLLOWED?

In the event that materials protected under the Privacy Act and FOIA Exemption 6 must be discussed in the formal TA meeting, the moderator may call the meeting into executive session. Only those persons who would be allowed under the Department's System of Records to view the protected records and materials will be allowed to attend the executive session. Records will be made available to the fullest extent allowable by Federal laws.

HOW MANY FORMAL TA MEETINGS WILL BE HELD?

Only one formal TA meeting will be held on the record for each case. However, the OFA policy that encourages researchers to be responsive to questions from petitioners, interested parties, their

researchers, and the general public under 83.10(j)(1) is not changed by this provision which permits a formal meeting on the record.