



Congressional Oversight Investigations during COVID: Accommodating Work from Home and Remote Hearings

February 2021

Prepared by Senate Clerk Laura Kilbride and House Clerk Kiley Bidelman

Both the Senate and the House have adopted rules and procedures to enable social distancing and promote a remote workforce during the COVID-19 pandemic. These protocols vary slightly between the two houses, but in both cases, committees are relying on clerks to manage the increased logistical burden—which means organized, advanced planning remains crucial.

Hearings/Markups

In the Senate, Senate rules allow for in-person, fully virtual, or hybrid hearings. Virtual hearings are required to take place over Cisco WebEx, with members and witnesses signed in as panelists and staff (including the court reporter and Senate Recording Studio) as attendees without the ability to speak or appear on video. The public views the hearing via livestream on the website. Hybrid hearings take place in a hearing room set up for socially distanced seating, with some members (with one staffer max) attending in the room and others appearing via WebEx on televisions in the room. Witnesses can appear in person, virtually, or in some combination.

For some oversight investigations, the committee may need to hold a markup to approve subpoenas or depositions. Under Senate rules, all members must physically be present to vote at markups and cannot appear virtually. However, depending upon committee rules, these motions may qualify for polling or votes by proxy provided a certain quorum is achieved. The clerk should assist the chief counsel in confirming committee procedure before a markup is scheduled.

In the House, hearings and markups can also be conducted in-person, virtually, or as a hybrid. Like the Senate, they must take place over Cisco WebEx with members and witnesses signed in as panelists and staff as attendees. Hybrid markups are allowed, with the establishment of an electronic repository for amendments and items for the record to be submitted and immediately distributed electronically to members and staff. Members may also vote virtually, but their camera must be on, and they must be physically seen for the Clerk to count the vote.

Here are some additional logistical considerations for oversight hearings.

-WebEx Events format lends itself to hearings better than WebEx Meetings.

-Good practice is to offer witnesses (and their counsel) the opportunity to have a run through a day or so before the hearing to familiarize them with the WebEx platform and answer technical questions. This session can be limited to about 15 minutes, and staff from both parties can be invited to attend to ensure the discussion is limited to technical and logistical questions.

-On court reporters, decide if they are remote or in person, making sure they have the documents they need; clerk must provide attendance as a reporter in the room can't see members on WebEx.

-For hybrids, decide how clerks will staff them: maybe one in the room and one running WebEx.

-For hybrid hearings, laptops should be given to the chair and the clerk in room so that both can monitor which members are present on WebEx.

-For hybrids and virtual hearings, identify which staffers have WebEx administrator accounts, potentially including clerks and staff assistants to set up staff briefings for each side of the aisle.

-Cisco has not yet built a timer into the WebEx platform, so the clerk running the hearing may want to point the webcam at the committee timer as a solution.

-On hearing exhibits, charts can be shared by the clerk running WebEx, showing the charts both online and on hearing room TVs by screensharing. BUT videos cannot be screenshared without prior preparation. The congressional Recording Studio can convert a video into a shareable format, provided it receives the video well in advance of the hearing. The Recording Studio will need to play the video rather than the clerk.

-Due to limited building access, witnesses and their staff may need to be escorted into the building. If hearing room seating is limited due to distancing, the clerk can procure separate hold rooms for each witness' staff, possibly with a TV to allow them to staff their bosses remotely.

-Clerk in the hearing room should run full soundchecks with the Recording Studio to ensure WebEx audio can be heard over speakers in the room, that dais mics can be heard on the WebEx platform, and that any exhibits are cued up and ready to play or display.

-Clerk running the WebEx platform should run soundchecks with members appearing virtually (or their staffers) before the gavel to ensure audio and video quality are good. Quality can be improved by using an Ethernet connection rather than wifi, and blinds should be adjusted for glare if a window is nearby.

-Good practice is to designate a staffer (clerk or staff assistant) to be the point person for the virtual witnesses in the event they experience technical difficulties during a hearing. Text communication can be faster than email to resolve problems.

-It is also a good idea to have a point person on staff to respond to member and member staff questions immediately during a hearing (especially to quickly ask a member to mute a mic).

Document Management

Covid has impacted how committees review documents in oversight investigations depending upon the technological access of oversight team members. Many committees have now issued laptops to all full-time staffers to improve work from home capabilities. A Senate or House-owned device will have VPN access and should allow full access to all the files and drives a staffer can access in the office. However, if some staffers on the team do not have full VPN access to files, adjustments will have to be made, especially for detailees, law clerks, or interns

helping to edit/format/proof reports or other committee-sensitive materials. If the staffers without committee laptops have a committee-issued phone, they may be able to use OneDrive to work on documents saved there by other staffers who have full access to network drives. If an intern or law clerk does not have a committee phone or email, they should be limited to open-source research only. Internal committee documents should not be sent to a personal email address.

Protocols on accessing committee documents have been in a constant state of flux due to changing guidance from the Senate Rules Committee and House Administration related to approved devices, available software, and appropriate access during work from home. It is likely the guidance will continue to change. Clerks should coordinate with the committee's systems administrator to ensure the committee is in compliance and availing itself of available options.

Interviews/Depositions

Committee interviews and depositions have also had to adjust to enable social distancing and account for travel restrictions. Committees can hold interviews over WebEx in much the same way as a virtual hearing; however a few logistical considerations must be worked out in advance.

-Committee staff must work out how to confer among themselves during an online interview. Whether using text, email thread, or a Teams chat, staff should set up the mechanism in advance.

-Committee staff must work out how interviewees confer with their counsel. If co-located, they can mute and speak. If in different locations, they can text, or mute the session and use a phone. Committee staff, the interviewee, and counsel should arrange protocols in advance.

-Committee staff must work out how exhibits will be shared during an interview. One option is to email witness and counsel PDF versions in advance, but it is hard to control potential sharing of those PDFs without committee consent. It may be possible to use PDF security software subject to SAA/CAO approval. Similar issues apply to documents sent by courier or FedEx, since hard copies can also be scanned and shared without committee consent. Another option is to designate a staffer to screenshare specific documents on WebEx during the interview. The interview might need to build in extra time for the witness to review screenshared documents. Which option a committee uses may change depending upon the interview, timing issues, the number of exhibits, and the relationship between the committee and the witness or counsel.

-For transcribed interviews, confirm with the court reporter any materials needed in advance.

-For sworn depositions, chief counsel should investigate and ensure the deposition complies with notary rules for swearing in witnesses. Applicable rules may depend upon where the interviewee or notary is. Many states have updated their regulations for remote notaries. Virginia currently allows remote notaries, while DC currently does not.
