What is the process by which the President’s appointments are confirmed?

Article II, Section 2 of the Constitution lays out the rules for presidential nominations and Senate confirmation. The President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law.”

In other words, it is the responsibility of the President to nominate judges and other officials while the Senate has the opportunity to weigh-in and then vote to confirm or reject the nominee. The Constitution also notes that Congress has the authority to let the President appoint lower officials without first requiring these officials to be approved by the Senate. In addition to federal judges, there are currently over 1000 Executive Branch positions requiring the advice and consent of the Senate.

Step 1: Nomination

First, during the nomination stage, the President and his staff survey potential nominees and thoroughly vet them to see which candidates are most qualified and likely to survive Senate scrutiny. The FBI and IRS will investigate the potential nominee’s background and issue reports to the President. Once the candidate for an executive post or a judicial post is nominated, the nominee proceeds to be examined by the Senate.

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1 U.S. CONST. art. II, § 2.
Step 2: Committee Hearings and Committee Vote

Next, at the Senate, the nominee will be reviewed by a Senate committee. Judicial nominations are reviewed by the Senate Judiciary Committee. Cabinet officials are reviewed by the committee most relevant to that cabinet position. Here, candidates may face intense questioning from Senators, especially from Senators who are doubtful of the nominee’s qualifications or are politically opposed to the nominee’s confirmation. At the end of the hearings, the committee votes on whether to send the nominee to the full Senate.

Step 3: Full Senate Review

If the nominee passes the committee stage, the full Senate then has an opportunity to vote to confirm the nomination. This is the stage where the most controversy lies. The Constitution clearly involves the President and the Senate in the nomination process. The controversial part is what is not in the Constitution: the series of traditions, customs, and other “informal arrangements” governing the way the President and Senate interact in this process. For instance, the degree of deference the Senate should show to the President’s choice is often debated. The custom of “senatorial courtesy” has developed under which the President is expected to consult the Senator of the state over which he is appointing a federal judge or the state from which the nominee comes. If the Senators object to a nominee from their home state the rest of the Senators are often expected to reject this nominee.

The Filibuster

In recent years, the most controversial issue regarding nominations has been the Senate rules and procedures concerning filibusters. The House, due to its larger size, has stricter rules regarding the time limits available for its members to speak. The Senate rules in the 1800s allowed debate to continue indefinitely as long as someone continued speaking. This meant that regardless of the number of Senators who would vote for a bill or nomination, one Senator or a group of Senators could delay the vote for as long as they could physically speak on the Senate floor. This is called a filibuster. In 1917 the rules were changed allowing a supermajority of Senators to invoke cloture, which ends the debate and brings

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the matter to a majority vote. Initially the cloture vote required two-thirds of the Senate. It was lowered to three-fifths (60 votes) in 1975.

The filibuster has been particularly contentious for nominations in recent years. Democrats in the Senate filibustered several of President Bush’s judicial nominees and Senate Republicans filibustered several of President Obama’s judicial nominees. In 2013 though, the long-discussed, but rarely used “nuclear option,” was invoked by Senate Democrats. The nuclear option, otherwise known as the constitutional option, leaves in place the 60 vote requirement for cloture on legislation, but sets the precedent allowing judicial and Executive branch nominees to be confirmed by a simple majority vote. The Senate Democrats invoked the precedent-setting nuclear option and decided that all nominations to executive or judicial posts, except for the Supreme Court, required only a simple majority vote to end a filibuster, instead of the three-fifths vote in the Senate rules. In the wake of a Democrat filibuster against Judge Gorsuch, Senate Republicans used the constitutional option to eliminate the exception for Supreme Court nominations.

**Conclusion**

Ultimately, most nominees by the President are eventually confirmed. Once the nominee is confirmed, the President is said to have “appointed” the nominee to the position and the nominee is sworn in to the new post.

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8 Id.