

MEMORANDUM

August 23, 2023

To: Senator Jack Reed

Subject: Floor Time to Process all Pending Military Nominations on the Executive Calendar

This memorandum responds to your request concerning the amount of time it would take the Senate to individually process all military nominations pending on the Senate's *Executive Calendar*, absent unanimous consent to skip or shorten time needed for some or all procedural steps. In addition to addressing your question on total floor time to process pending military nominations, a background discussion is provided on how the Senate routinely processes military nominations by unanimous consent, the informal concepts of *holds* and *blanket holds*, and the procedural steps required to process nominations absent unanimous consent. The final section of the memo identifies the number of military nominations currently pending (as of August 22, 2023) on the Senate's *Executive Calendar*, details the assumptions made in calculating floor time needed to process these nominations, and provides total floor time needed to confirm them.

Information in this memorandum that may be of general interest to Congress may be used in other CRS products, but the confidentiality of your request will be maintained.

Background

Every year, the President submits to the Senate, for its advice and consent, thousands of nominations for non-civilian military appointments and promotions. These nominations are often submitted as lists of names, such that one nomination contains multiple individual nominees.¹ Military nominations are routinely taken up and confirmed on the Senate floor *en bloc* (as a group) by unanimous consent. For example, on July 27, 2023, the Senate took up and confirmed 2,680 military nominees *en bloc* by unanimous consent.²

Unanimous consent is not necessary to approve a nomination in the Senate, but unanimous consent facilitates approving a nomination quickly and is the only way to process multiple nominations

¹ For example, PN842 in the 118th Congress, included 391 named officers nominated for appointment to the rank of Major in the United States Air Force (<https://www.congress.gov/nomination/118th-congress/842>).

² *Congressional Record*, daily edition, vol. 169 (July 27, 2023), p. S3739. The 2,680 nominees comprised 39 nominations submitted as lists.

simultaneously (that is, *en bloc*). When a Senator communicates to their party leadership that they would object to any unanimous consent request to confirm a nomination, they are said to have placed a *hold* on it. When Senators inform their party leader that they would object to approving a category of nominations by unanimous consent (e.g., all military nominations or all nominations to a specific federal agency) they are said to be placing a *blanket hold* on those nominations. Absent unanimous consent, the Senate must consider and vote on each nomination separately (that is, on each individual nominated to each position). Nominations subject to holds or blanket holds may have their consideration delayed or prevented due to the amount of floor time it would take to consider all of them individually.

In response to a blanket hold, the Senate could choose to pursue consideration of a single nomination without unanimous consent. The question of confirmation is a debatable one in the Senate and may require a cloture process in order to end debate and reach a vote. Under current Senate precedents, invoking cloture on a nomination requires majority support, and most nominations are subject to a maximum of two additional hours of post-cloture debate.³

Absent unanimous consent, the steps to confirm a nomination include:

- The Senate votes on a non-debatable motion to proceed to executive session to take up a nomination on the *Executive Calendar*.⁴
- The majority leader (or his designee) files cloture on the nomination.⁵ The Senate must wait two session days before voting on cloture absent unanimous consent to alter this “ripening period.” The Senate can conduct other business during these two days, and usually does.
- Two days of session later, the Senate votes on cloture.⁶ The rule requires that the vote to invoke cloture is required to be a roll call vote. If a majority of Senators voting support cloture, then cloture is invoked, and further consideration of the nomination is limited.
- The Senate conducts post-cloture debate on the nomination. For all military nominations now pending on the Calendar, there is a maximum of two hours of consideration on each nomination after cloture has been invoked. Once cloture is invoked on a matter, the Senate can consider other business during the post-cloture period only by unanimous consent.
- After post-cloture debate time expires, or when no Senator seeks to discuss the nomination further, the Senate votes on the nomination.⁷ Confirmation requires majority support.

³ For a more detailed discussion of the Senate’s reinterpretations of Senate Rule XXII in recent years, see CRS Report R44819, *Senate Proceedings Establishing Majority Cloture for Supreme Court Nominations: In Brief*, by Valerie Heitshusen, and the “Reduced Post-Cloture Time on Nominations: Reinterpretation of the Rule” section in CRS Report RL31980, *Senate Consideration of Presidential Nominations: Committee and Floor Procedure*, by Elizabeth Rybicki.

⁴ This motion is routinely approved immediately without a roll call vote—but with sufficient support, a Senator could secure a roll call vote on this question. The motion requires a majority vote to pass.

⁵ In order to properly present a cloture motion on the Senate floor, Senate Rule XXII requires that it be signed by at least 16 Senators. Once the cloture motion is filed on the floor, it is read aloud in its entirety by the clerk. However, the Senate routinely waives the reading of the motion by unanimous consent.

⁶ Prior to voting on the motion to invoke cloture, Senate Rule XXII requires the Presiding Officer to direct the clerk to call the roll in order to establish that a quorum is present. The Senate routinely waives this quorum call by unanimous consent, but any Senator could object and force this vote to occur.

⁷ The vote is taken by voice, unless a Senator with sufficient support requests a roll call vote on the question of confirming the nomination. Securing a recorded vote requires the support of one-fifth of Senators present. When conducting business, the Senate assumes a quorum is present, which consists of a majority of at least 51 Senators. A minimum sufficient second for securing a recorded vote, therefore, requires 11 Senators (one-fifth of 51).

- The motion to reconsider the confirmation vote is routinely, by unanimous consent, considered made and laid upon the table.⁸ This final parliamentary step prevents the possibility of a re-vote on the nomination and immediately returns the approved nomination to the President.

Because the Senate must wait two session days between when cloture is filed on a nomination and the ensuing cloture vote, separately confirming a large number of nominations using the cloture process can take considerable floor time. To somewhat expedite the process, it is common for the majority leader to file cloture on several nominations sequentially on the same day (sometimes referred to as “stacking” cloture motions); the cloture motions then mature simultaneously over the next two session days.

In order to stack cloture motions, the majority leader first makes a non-debatable motion to enter executive session to take up a specific nomination. The motion is routinely agreed to by voice vote, though any Senator could, with a sufficient second, secure a roll call vote. Next, the majority leader files cloture on the nomination and then makes a non-debatable motion to return to legislative session (also routinely agreed to by voice vote). The majority leader can repeat these steps for any number of nominations.

Stacked cloture motions filed sequentially on multiple nominations ripen simultaneously after the next two days of Senate session. At that time, each nomination must still be considered separately; that is, first a vote to invoke cloture, then up to two hours of post-cloture debate, and, finally, a vote on confirmation for the nominee – the process repeated for each stacked nomination. As a result of stacking cloture motions, the Senate is often able to confirm several nominations on the day cloture motions mature.

Time Required to Individually Confirm Pending Military Nominations

As of August 22, 2023, there are 273 individual military nominations pending on the Senate *Executive Calendar*.⁹ This includes all nominations made to the Army, Navy, Marine Corps, Air Force, and Space Force.¹⁰

Several assumptions, listed below, were used to estimate approximate floor time necessary to process and confirm 273 military nominations without interruption. Footnotes accompany each bullet with further detail on how the Senate routinely processes certain procedural steps and how those steps could take longer absent unanimous consent, and/or as a result of forcing recorded votes. In other words, the final calculations derived in this memorandum could conceivably take even more total floor time if a group of Senators in opposition maximized their procedural leverage at each step of consideration.

Assumptions to calculate floor time, include:

- That it takes one minute and thirty seconds for a Senator to: make a nondebatable motion to proceed to executive session to consider a nomination (agreed to by voice vote); have a cloture motion sent to the desk; and then move to proceed back to legislative session (agreed to by voice vote). At this point the majority leader (or his designee) has the opportunity to begin this same process again for another nomination.¹¹

⁸ Absent unanimous consent to table the motion to reconsider, a majority of the Senate could immediately vote to table the motion to reconsider if it were offered.

⁹ https://www.senate.gov/legislative/LIS/executive_calendar/2023/08_22_2023.pdf.

¹⁰ The total does not include the two civilian nominations to the Department of the Defense pending on the calendar (Nickolas Guertin to be an Assistant Secretary of the Navy and Ronald T. Keohane to be an Assistant Secretary of Defense).

¹¹ It should be noted that for each of the steps listed here, a Senator (or group of Senators) opposed to proceeding could take procedural action to force more floor time to be consumed. For example, the motions to move into executive session and (continued...)

- That roll call votes each take a maximum of 15 minutes to conduct, per the Senate’s agreement at the start of the 118th Congress.¹² It is also assumed that each confirmation process would involve two roll call votes: one to invoke cloture and one to confirm the nomination.
- That cloture is invoked, and the maximum two hours of post-cloture time is consumed for each nomination prior to voting on confirmation.¹³
- That the majority leader (or his designee) consecutively files (“stacks”) cloture on all 273 nominations, so that the cloture motions concurrently ripen over the next two days of legislative session.¹⁴

Incorporating the above assumptions, it would take the Senate approximately 689 hours and 20 minutes of floor consideration, plus two days of session at the start of the process for cloture to mature on all 273 nominations. This total represents approximately 30 days and 17 hours to process all 273 military nominations, assuming the Senate worked 24 hours a day without break or interruption by other business. Alternatively, based on the above assumptions, if the Senate exclusively processed these nominations during eight-hour session days, it would take approximately 89 days to confirm all 273 nominees.

We trust this memorandum meets your needs. Please do not hesitate to contact us if we can be of any further assistance.

legislative session are not debatable and are routinely determined immediately by voice vote. Any Senator could request the yeas and nays with the support of at least 11 other Senators (representing one-fifth of a presumed minimum quorum of 51 Senators). In addition, when a cloture motion is sent to the desk, it is read aloud in its entirety by the clerk. This reading is routinely waived by unanimous consent, but any Senator could object to that request and force the full reading of the motion, including the names of the 16 Senators who signed it.

This time assumes that the Senate, by unanimous consent, will waive the full reading of the cloture motion on the nomination. If a Senator objected to such a request, the clerk would read the entirety of the cloture motion including the names of the Senators who signed it.

¹² *Congressional Record*, daily edition, vol. 169 (January 3, 2023), p. S7.

¹³ For purposes of calculating time, this assumes that the mandatory quorum call prior to voting on cloture is waived by unanimous consent for each nomination.

¹⁴ Assuming that the procedural steps to enter executive session to take up a nomination, send a cloture motion to the desk, and then enter legislative session takes one minute and thirty seconds for each of 273 nominations, this would take approximately 6.8 hours if done without interruption. Alternatively, if roll call votes were forced on the motions to enter executive session and legislative session, at 15 minutes per vote, that is, 30 minutes per nomination, that would add 136.5 hours (5.69 days) to the process of filing cloture on all 273 nominations.
