



Electoral College

Instructions to State Officials

Responsibilities of the States in the Presidential Election

The National Archives and Records Administration's Office of the Federal Register prepared these instructions under the authority of 3 U.S.C. 6, 11, 12, and 13 to assist the States in performing their duties.

The term "Governor" includes the Mayor of the District of Columbia and the term "State" includes the District of Columbia.

1. *Appoint Electors*

The United States Constitution and Federal law do not prescribe the method of appointment other than requiring that electors must be appointed on the Tuesday after the first Monday in November (November 6, 2012). In most States, the political parties nominate slates of electors at State conventions or central committee meetings. Then the citizens of each State appoint the electors by popular vote in the state-wide general election. However, State laws on the appointment of electors may vary.

Under the Constitution, State legislatures have broad powers to direct the process for selecting electors, with one exception: **Article II, section 1, clause 2 provides that "no Senator, Representative, or Person holding an Office of Trust or Profit under the United States" may be appointed as an elector.** It is not settled as to whether this restriction extends to all Federal officials regardless of their level of authority or the capacity in which they serve, but we advise the States that the restriction could disqualify any person who holds a Federal government job from serving as an elector.

2. *Prepare Certificates of Ascertainment*

After the general election, the Governor of each State prepares no less than **SEVEN original** Certificates of Ascertainment along with two certified copies. *Alternatively, the Governor may prepare NINE original Certificates of Ascertainment.*

Federal law does not govern the general appearance of the Certificate of Ascertainment. The format varies, conforming to State law or custom. However, Federal law does require that the original Certificates of Ascertainment be prepared and authenticated in the following manner:

Each of the SEVEN or NINE original Certificates MUST

- List the names of the electors chosen by the voters and the number of votes received.
- List the names of all other candidates for elector and the number of votes received.
- Be signed by the Governor (auto-pen signatures or stamps are not permitted).
- Carry the State seal.

3. *Distribute Certificates of Ascertainment*

One of the seven original Certificates of Ascertainment along with **two certified copies** (or three originals, if nine were prepared) must be sent by **registered mail** to:

David S. Ferriero
Archivist of the United States
National Archives and Records Administration
c/o Office of the Federal Register (NF)
8601 Adelphi Road
College Park, MD 20740-6001

These should be sent to the Archivist as soon as possible after the November 6 election results are finalized.

Upon receipt, the Legal Staff of the Office of the Federal Register will examine the Certificates of Ascertainment for legal sufficiency. If the certificates meet all requirements as required by law, the two certified copies (or two additional originals, if nine were prepared and three sent) will be delivered to the U.S. House and Senate. The Office of the Federal Register will retain one original Certificate of Ascertainment from each State.

If the certificates are not legally sufficient, Legal Staff from the Office of the Federal Register will notify the appropriate State official(s) and work together to resolve outstanding problems within the prescribed deadline.

The State must retain the other six original Certificates of Ascertainment for the meeting of the State's electors on December 17, 2012. Those six originals will be paired and distributed with the Certificates of Vote executed at the Electoral College meeting. **The paired Certificates must be submitted to the appropriate officials (designated in section 6 of this document) no later than December 18, 2012.**

4. *Hold the Meeting of Electors*

On the first Monday after the second Wednesday in December (December 17, 2012), the electors meet in their respective States. **Federal law does not permit the States to choose an alternate date for the meeting of electors—it must be held on December 17, 2012.** The State legislature may designate where in the State the meeting will take place, usually in the State capital. At this meeting, the electors cast their votes for President and Vice President.

There is no Constitutional provision or Federal law requiring electors to vote in accordance with the popular vote in their States. However, some States have such requirements.

Any controversy or contest concerning the appointment of electors must be decided under State law at least six days before the meeting of the electors. (See Title 3, Section 6 of the U.S. Code.)

If a designated elector is unable to carry out the required duties on the day of the Electoral College meeting, the laws of each State govern the method for filling vacancies.

5. *Prepare the Certificates of Vote*

The electors must execute **SIX original** Certificates of Vote. Federal law does not govern the general appearance of the Certificate of Vote. The format varies, conforming to State law or custom. However, Federal law requires that the Certificates of Vote be prepared and authenticated in the following manner:

Each of the *SIX original Certificates* *MUST*

- Contain two distinct lists, one for President and one for Vice President:
 - List all persons who received electoral votes for President and the number of electors who voted for each person.
 - List all persons who received votes for Vice President and the number of electors who voted for each person.
 - Do not include the names of persons who did not receive electoral votes.
- Be signed by all of the electors.

THEN, pair the Certificates of Ascertainment and Vote

- The **SIX original** Certificates of Ascertainment provided to the electors by the Governor must be paired with the **SIX original** Certificates of Vote.

Each of the *SIX pairs of Certificates* *MUST*

- Be sealed and certified by the electors as containing the list of electoral votes of that State for President and Vice President.

6. *Distribute Certificates of Vote*

The **SIX pairs** of Certificates must be sent to the designated Federal and State officials as follows:

One pair is sent by registered mail to:

The Honorable Joseph R. Biden, Jr
President of the United States Senate
United States Senate
Washington, DC 20510

Two pairs are sent by registered mail to:

David S. Ferriero
Archivist of the United States
National Archives and Records Administration
c/o Office of the Federal Register (NF)
8601 Adelphi Road
College Park, MD 20740-6001

- One is held subject to the order of the President of the United States Senate in case the electoral votes fail to reach the Senate.
- The other is held by the Office of the Federal Register for public inspection for one year.

Two pairs are sent by registered mail to:

The Secretary of State of each State.

- One is held subject to the order of the President of the United States Senate or the Archivist of the United States in case the electoral votes fail to reach the Senate or the Archivist.
- The other is to be preserved by the Secretary of State for public inspection for one year.

One pair is sent by registered mail to:

The Chief Judge of the Federal District Court located where the electors meet.

- It is held subject to the order of the President of the United States Senate or the Archivist of the United States in case the electoral votes fail to reach the Senate or the Archivist.

The statutory deadline for the designated Federal and State officials to receive the electoral votes is December 26, 2012. Because of the very short time between the meetings of the electors in the States on December 17 and the December 26 statutory deadline, followed closely by the counting of electoral votes in Congress on January 6, 2013, it is imperative that the Certificates be mailed as soon as possible.

We strongly recommend that the sealed pairs of Certificates be taken to the Post Office on December 17, or no later than the morning of December 18, to minimize delays that could occur during the holiday mail season. Some States may find it useful to alert their local Postmaster to the extraordinarily important nature of the mailing. When the paired Certificates of Vote and Certificates of Ascertainment have been delivered to the designated Federal and State officials, the States' Electoral College duties are complete.

Before the election this year, the Legal Staff of the Office of the Federal Register will telephone Secretaries of State and other election officials to establish contact with the States and assure the smooth operation of the Electoral College process.

Contacts

For more information on the Electoral College and the election responsibilities of the States and the Archivist of the United States, contact the Office of the Federal Register:

Telephone: 202-741-6030

E-mail: Electoral.College@nara.gov

Your Electoral College contacts at the Office of the Federal Register are:

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