



Office of the Federal Register's
Administration of the Electoral College Process

February 26, 2018

OIG Audit Report No. 18-AUD-04

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Executive Summary

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Why Did We Conduct This Audit?

The Electoral College process was established under Article II and Amendment 12 of the U.S. Constitution. It consists of the selection of the electors by voters in each state, the meeting of the electors to vote for the President and Vice President of the United States, and the counting of the electoral votes by Congress. The Archivist of the United States is responsible for carrying out ministerial duties on behalf of the States and the Congress under 3 U.S.C. §§ 6, 11, 12, 13. The Archivist has delegated to the Director of the Federal Register the authority to carry out those ministerial duties, for which the Office of the Federal Register (OFR) has developed and documented additional policies and procedures. We conducted this audit to determine whether the OFR implemented proper controls for the administration of these duties within the Electoral College process, including properly maintaining records from the process.

What Did We Recommend?

The OFR needs to develop detailed procedures and a formalized process for work performed during the Electoral College process. This report makes six recommendations, which are intended to strengthen the OFR's internal controls related to its responsibilities in this process. Management concurred with the six recommendations in this audit report, and in response, provided a summary of their proposed actions.

What Did We Find?

The Archivist has delegated the responsibility for administering the National Archives and Records Administration's (NARA) ministerial duties in the Electoral College on behalf of the States, the Congress, and the American people to the OFR. The OFR also acts as a trusted agent of the Congress in the sense that it is responsible for reviewing the legal sufficiency of the certificates (review for completeness and accuracy) before the House and Senate accept them as evidence of official State action. The OFR's work during the Electoral College process is limited to ensuring the completeness and integrity of the Electoral College documents submitted to Congress, and making sure the documents are made available for public inspection at the OFR for one year before being transferred to NARA for permanent retention.

Although the OFR indicated tasks were completed during their role as an administrator, they were unable to provide sufficient evidence to demonstrate completion of those tasks in accordance with their policies and procedures. Additionally, documented policies and procedures were not always followed by the OFR. This occurred because there was inadequate management oversight and management did not define and implement a formalized process to document work performed during the Electoral College process. Without effective management oversight, regular status updates, and up-to-date written procedures, NARA lacks assurance the responsibilities delegated to the OFR were performed in accordance with policies and procedures, and all the Certificates of Ascertainment and Vote received by NARA were properly accounted for in the Electoral College process.

Background

The Electoral College is a process, not a place. It was established under Article II and Amendment 12 of the Constitution of the United States. The Constitution and Federal law place certain responsibilities for Presidential election on State executives and the electors.

The Electoral College process consists of the selection of the electors by voters in each state, the meeting of the electors to vote for the President and Vice President of the United States, and the counting of the electoral votes by Congress. The Electoral College consists of 538 electors. A majority of 270 electoral votes is required to elect the President.

Appoint Electors

The 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. 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. State laws on the appointment of electors may vary.

Prepare the Certificates of Ascertainment

After the general election, the Governor of each State prepares seven original and two certified copies of the Certificates of Ascertainment (alternatively, the Governor may prepare nine original Certificates). The Certificates must be prepared, authenticated, and:

- 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.
- signed by the Governor and carry the State seal.

The Governors' Offices distribute either (1) three original or (2) one original and two certified copies of the Certificates to the Archivist. The State must retain the other six original Certificates until they are attached to the Certificates of Votes.

Hold the Meeting of Electors

On the first Monday after the second Wednesday in December, the electors meet in their respective States. At this meeting, the Electors cast their votes for President and Vice President. If any Electors are unable to carry out their duties on the day of the Electoral College meeting, the laws of each State would govern the method for filling vacancies. Any controversy or contest concerning the appointment of Electors must be decided under State law at least six days prior to the meeting of the electors.

Prepare the Certificates of Vote

The electors execute six Certificates of Vote that must be prepared, authenticated, and include the following:

- 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 contain the names of persons who did not receive electoral votes.
- Signatures of all electors.

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. Certificates are distributed to the Archivist, President of the United States Senate (Congress), Secretary of State of each State, and Chief Judge of the Federal District Court.

Office of the Federal Register (OFR)

The Archivist of the United States is responsible for carrying out ministerial duties on behalf of the States and the Congress under 3 U.S.C. §§ 6, 11, 12, 13. The Archivist has delegated to the Director of the Federal Register the authority to carry out those ministerial duties, for which the OFR has developed and documented additional policies and procedures to carry out the duties.

The Office of the Federal Register coordinates these ministerial functions of the Electoral College on behalf of the Archivist, the States, Congress, and the American people. The Office of the Federal Register operates as an intermediary between the governors and secretaries of state of the States and the Congress. It also acts as a trusted agent of the Congress in the sense it is responsible for reviewing the legal sufficiency of the certificates before the House and Senate accepts them as evidence of official State action.

The OFR's Legal and Policy Affairs Office (FL) ensures electoral documents are transmitted to Congress, made available to the public, and preserved as part of our nation's history. FL reviews the electoral certificates for the required signatures, seals and other matters of form; as specified in Federal law. Only the Congress and the Courts have the authority to rule on substantive legal issues relative to the Electoral College.

Objectives, Scope, Methodology

Our objective was to determine whether the OFR implemented proper controls for the administration of NARA's ministerial duties within the Electoral College process, including properly maintaining records from the process.

The audit covered the OFR's role in the 2016 Electoral College process. We did not review any actions or procedures of the states or Congress. We conducted our fieldwork at the OFR office in Washington, DC and the National Archives in College Park, Maryland (Archives II).

To address our audit objective, we interviewed FL's Director and Staff Attorney, and personnel from the Archives II Mailroom to gain an understanding of the Electoral College process as it relates to the OFR. We obtained and reviewed:

- Federal laws related to the Electoral College process, including Article II and Amendment 12 of the U.S. Constitution and 3 U.S.C. § 6, 11, 12, 13
- the OFR's policies and procedures (2004 and 2017);
- management's Internal Control Reports for fiscal years 2016 and 2017; and
- the 2012 and 2016 Certificates of Ascertainment and Vote for each state.

We also reviewed and accessed FL's 2016 tracking database used during the Electoral College process, however we were unable to rely on the database as there was no evidence it was used.

To assess internal controls relative to our objectives, we reviewed the OFR's internal control reports for fiscal years 2016 and 2017. In the end of the year reports, management reported there is reasonable assurance that the management control in effect, were adequate and effective in ensuring that (1) programs achieve their intended results; (2) resources were used consistent with NARA's mission; (3) programs and resources were protected from waste, fraud, and mismanagement; (4) laws and regulations were followed; and (5) reliable and timely information is obtained, maintained, reported and used for decision making. Additionally, the FY 2017 internal control report noted the OFR carried out its responsibilities associated with the 2016 Presidential Election and operations of the Electoral College process. Management indicated the 2016 Electoral College process provided a working "internal control review" of processes, all of which they found were to be sound.

We assessed the OFR's control environment in accordance with Government Accountability Office's *Standards for Internal Control in the Federal Government*. We tested internal controls associated with the OFR's responsibilities for the Electoral College process. Specifically, as part

of our review, we assessed the OFR's controls related to the receipt, tracking, and review of Certificates of Ascertainment and Vote; the FL Director's review of tasks performed; communication with the States, Congress, and Archivist; reporting results; record retention; safeguarding records; internal control reporting; and public inspection of certificates.

We found some internal controls over the OFR's administration of ministerial duties for the Electoral College process were ineffective. As stated in this report, we identified opportunities to improve how the OFR (1) formalizes and maintains documentation throughout the Electoral College process as it relates to its responsibilities and tasks performed; (2) ensures the accuracy of information reported in Internal Control Reports (ICP) reports; and (3) follows the requirements in 3 U.S.C. § 6 and 11 for receiving Certificates via registered mail.¹ Our recommendations, if implemented, should strengthen the OFR's internal controls related to its responsibilities in the Electoral College process.

This performance audit was conducted in accordance with generally accepted government auditing standards between January and December 2017. The generally accepted government auditing standards require we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹The definition of "registered mail" was interpreted differently by the OIG and the OFR. The OIG interprets "registered mail" as mail that the U.S. Postal Service records at the time of mailing and at each point on its route so as to guarantee safe delivery. The OFR interprets "registered mail" as packages that are sent to OFR by a means that can be tracked during transit regardless of the carrying entity.

Audit Results

Finding 1. Lack of Documentary Evidence for Tasks Performed

The OFR is responsible for administering NARA's ministerial duties in the Electoral College on behalf of the States, the Congress, and the American people. It also acts as a trusted agent of the Congress in the sense that it is responsible for reviewing the legal sufficiency of the certificates (review for completeness and accuracy) before the House and Senate accept them as evidence of official State action. The OFR's work during the Electoral College process is limited to ensuring the completeness and integrity of the Electoral College documents submitted to Congress, and making sure the documents are made available for public inspection at the OFR for one year and then transferred to NARA for permanent retention.

Although the OFR indicated tasks were completed during their role as an administrator of the process, they were unable to provide sufficient evidence to demonstrate completion of those tasks, in accordance with their policies and procedures. Additionally, documented policies and procedures were not always followed by the OFR during the Electoral College process. This occurred because there was inadequate management oversight and management did not define and implement a formalized process to document work performed.

GAO's *Standards for Internal Control in the Federal Government* indicates documentation is a necessary part of an effective internal control system. Documentation is required for the effective design, implementation, and operating effectiveness of an entity's internal control system. Additionally, management is responsible for designing the policies and procedures to fit an entity's circumstances and building them in as an integral part of the entity's operations.

Without effective management oversight, regular status updates, and up-to-date written procedures, NARA lacks assurance the responsibilities delegated to the OFR were performed in accordance with policies and procedures, and all the Certificates of Ascertainment and Vote received by NARA were properly accounted for in the Electoral College process.

Procedures Not Comprehensive and Updated in a Timely Manner

The OFR did not review and update their *Electoral College Procedures* in a timely manner. At the beginning of the audit, the OFR provided the Office of Inspector General (OIG) the *Electoral College Procedures* (2004), which were similar to the procedures reflected on the OFR's website. During the audit, management updated the procedures as the previously provided procedures did not accurately reflect the OFR's current process and provided the OIG with updated procedures (*Electoral College Procedures* (2017)). When we compared the updated

procedures to the old procedures, we determined management eliminated what the OIG deems as key control activities not performed during the 2016 Electoral College process. Specifically, the updated procedures no longer required the following:

- The OFR to establish procedures with the Archives II Mailroom for handling the certificates;
- Mail from States to be sent to the Archivist's secretary, logged, and sent via special messenger to the Federal Register;
- Mail not immediately delivered by special messenger to the OFR be held in a safe in the Archivist's office; and
- Preparation and delivery of the Certificates of Ascertainment to the President of the Senate, including collecting a receipt upon delivery of the certificates.

There was no evidence of any assessment conducted prior to the 2016 Electoral College process supporting the changes to the above procedures, including a rationale for the changes and why the key control activities were no longer relevant. The procedures were also updated to reflect the process for public inspections of certificates based on the requirement outlined in 3 U.S.C. § 11 (See further discussion of these controls activities in the observations below).

The OFR's Staff Attorney and Director have been involved in the OFR's Electoral College process since 1996 and 2004, respectively. While they were knowledgeable about the OFR's responsibilities for the Electoral College process, detailed procedures for some of the tasks performed (e.g. populating the tracking database, reviewing the Certificates of Ascertainment and Vote, and reporting results) have not been documented in the *Electoral College Procedures* (either the 2004 or 2017 versions). Additionally, while the Staff Attorney reported performing many of the tasks during the 2016 Electoral College process, they did not maintain supporting documentation of those tasks or problems encountered. This impacted the audit as FL's Director exhibited a key person dependency during the audit as some requests for information and documentation were delayed during the Staff Attorney's extended leave.

According to the GAO's *Standards for Internal Control in the Federal Government*, management documents in policies, the internal control responsibilities of the organization. Those in key roles for the unit may further define policies through day-to-day procedures, depending on the rate of change in the operating environment and complexity of the operational process. Furthermore, management periodically reviews policies, procedures, and related control activities for continued relevance and effectiveness in achieving the entity's objectives or addressing related risks. If there is a significant change in an entity's process, management reviews this process in a timely manner after the change to determine that the control activities are designed and implemented appropriately.

Lack of current documented procedures may result in inconsistent process operations, key person dependencies, overall process inefficiencies, and the loss of institutional knowledge about NARA's role in the Electoral College process.

Confirmation of Responsibilities with States and Congress Not Performed Prior to the Election

The OFR did not provide documentation supporting confirmation with the States of their responsibilities in the Electoral College process and arrangements made with the Secretary of the Senate, General Counsel to the Secretary of the Senate, Senate Parliamentarian, Clerk of the House of Representatives, and House Parliamentarian (Congressional officers and staff) for the delivery of Certificates to Congress.

The States and Congress rely on the OFR to oversee the Electoral College. The OFR's *Electoral College Procedures* (2004) indicates States should be contacted to confirm receipt of the informational documents and to remind them of their responsibilities. The OFR should also work with Congressional officers and staff to make arrangements for the delivery of the Electoral College Certificates to Congress.

Prior to the general election, the OFR mailed each state informational documents notifying them of their electoral responsibilities. The OFR was unable to provide documentation supporting contact was made with the States confirming their understanding of their responsibilities. Management indicated that calls were made by staff and if contact could not be made immediately, the staff repeated the calls until they connected with a state representative.

Additionally, management could only provide evidence supporting a meeting with Congressional officers and staff after the OFR received the certificates from the States. There was no documentation confirming the process the OFR and Congressional officers and staff defined prior to the election, for delivery of the Certificates to Congress.

Failure to confirm the States understanding of their responsibilities and how certificates will be delivered to Congress creates the potential for preventable mistakes to occur with the creation and delivery of the certificates.

Certificates Not Properly Received

The OFR did not follow the controls established in the *Electoral College Procedures* (2004) for Electoral College mail. Additionally, not all Certificates were received via registered mail as required.

According to 3 U.S.C. § 6 and 11, the States are to communicate by registered mail to the Archivist of the United States the Certificates of Ascertainment and Vote. Additionally, the *Electoral College Procedures* (2004) indicate prior to the Electoral College process, the OFR

should establish procedures with the Mailroom for handling the Certificates and prepare log sheets for use in the Mailroom. After the Mailroom receives each set of Certificates, they should be sent to the Archivist's secretary. The certificates should be logged in and placed in an envelope for delivery to the OFR by special messenger. If no messenger is available or it is late in the day, the Archivist's office will secure the material in a safe.

The OFR did not direct states to only send Certificates of Ascertainment and Vote via registered mail as required. Instead the OFR directed States to send Certificates to the Archives II Mailroom's (operated by contractors) address or directly to the OFR via registered mail or commercial carrier. The OFR also did not establish procedures with the Archives II Mailroom for handling the Certificates. When Certificates were received at the Mailroom they were logged by a staff member, however those received at the OFR were not logged when received. Also, the Mailroom did not send the Certificates to the Archivist's office, but directly to the OFR via special messenger. Management indicated the process changed because during previous elections there was a delay in receiving the Certificates at the OFR. However, this was not documented in the *Electoral College Procedures* (2004) that were effective during the 2016 Electoral College process.

Once received, the Certificates were scanned and secured in a security container at the OFR. However, when the OFR stopped delivery of the Certificates to the Archivist's office, they did not ensure the Mailroom developed appropriate procedures for safeguarding the Certificates. We found the Certificates received at the Mailroom were placed in a security container that remained open during the day and only locked in the evening. We also noted the following.

- The Mailroom's Contracting Officer's Representative was unaware of the procedures followed by the Mailroom for Electoral College mail, including its security.
- A majority of the Mailroom staff have access to the security container.

Failure to continuously account for, safeguard, and adequately manage access to Certificates, may increase the risk of loss, theft, or unauthorized access.

Certificate Tracking Database Not Used During the 2016 Electoral College Process

The OFR did not track the status of the Certificates of Ascertainment and Vote received during the 2016 Electoral College process in its tracking database. Specifically, there was no tracking of when the Certificates of Ascertainment and Vote were received from States at the OFR; whether problems were identified from the review of the certificates; whether States were notified of any problems; or whether the problem (s) was resolved.

According to the OFR's *Electoral College Procedures* (2004 and 2017), the database is used to log receipt of Certificates. The *Electoral College Procedures* (2017) also indicate the database

tracks any issues with Certificates and their resolution. The database fields available include the certificates receipt date, number of certificates received, notes related to the certificates, and check boxes to indicate problems with the certificates and posting the certificates to the OFR website (See Exhibit 1). However, during the audit we found no evidence the database was used to log and track certificates received by the OFR during the 2016 Electoral College process.

Exhibit 1 - 2016 Electoral College Access Database

The screenshot shows a web application window titled "Log/Track Certificates". The form is set against a green textured background. At the top left, there are input fields for "State", "Name", "Title", "Phone Number", and "Email", followed by a larger "Comments" text area. To the right of these fields are two buttons: "Alternate POC" and "Governor Info". A "Reminders" section on the right side contains a list of instructions: "2 Certificates - Ascertainment and Vote", "Certificates of Ascertainment should be prepared and sent ASAP to Archivist, but received no later than December 17", "Send 1 original plus 2 authenticated copies (or 3 original) Certificates of Ascertainment by registered mail", and "Certificate of Vote sent immediately after electors meet December 17." Below this is a URL: "http://www.archives.gov/federal_register/electoral_college/key-dates.html". A dashed line separates this section from the certificate tracking section. This section is divided into two columns: "Certificates of Ascertainment" and "Certificates of Vote". Each column has a "Received" input field, a "#" dropdown menu, and checkboxes for "Problem?" and "Posted?". At the bottom of the form is a "Notes" text area. The bottom of the window features a navigation bar with "Record: 1 of 1", "Unfiltered", and a search box.

The OFR’s *January and April 2017 Internal Control Reports* indicated the OFR maintains a spreadsheet or database of data associated with the OFR’s critical duties and documents, which is reviewed on a daily basis. These statements do not appear to be accurate since, as previously mentioned, there was no evidence a spreadsheet or database was used during the 2016 Electoral College process. When the OIG discussed this with management, they indicated problems were experienced with the database during the 2016 Electoral College process.² However, in absence of the database properly working, the OFR did not provide documentation supporting the use of

² After the OIG brought to management’s attention the concerns regarding the database and statements in the *Internal Control Reports*, in September 2017, management documented the failure of the database in a memo and the fourth quarter *Internal Control Report*. Previously, the OFR had no documentation supporting their statements regarding the database, including failure of the database during the 2016 Electoral College process.

alternative methods to track the Certificates of Ascertainment or Vote, nor did they document the problems encountered or solicit the help of IT to resolve those problems. This is also contradictory to the *Internal Control Reports* Monitoring Plan which indicates the FL's Director oversees the record keeping to identify gaps and once identified they are quickly brought to the attention of the program office.

The *Internal Control Reports* also included performance measures for the OFR to measure whether the process was successfully performed, including the:

- number of ballots available for delivery to U.S. Senate,
- number of ballots received,
- number of ballots received on time,
- number of certificates of Ascertainment received, and
- number of certificates received on time.

When we requested documentation supporting the metrics, management indicated the metrics were inaccurate as the OFR receives Certificates, not ballots. However, further discussion revealed the documentation to support the metrics was not available as the metrics were based on information that would have been recorded in the database.

We also found the database was not protected as it was maintained on a shared drive and required no password to access it.

According to GAO's *Standards for Internal Control in the Federal Government* management designs control activities (1) over the information technology infrastructure to support the completeness, accuracy, and validity of information processing by information technology and (2) for security management of the entity's information system for appropriate access by internal and external sources to protect the entity's information system.

Failure to properly secure systems increases the risk of data loss and inappropriate use.

Lack of Documentation Supporting Review of Certificates

There was no documentation supporting the OFR's review of States' Certificates of Ascertainment and Vote for legal sufficiency (completeness and accuracy). Also, although emails were used to notify States when problems were identified, they were not evidence of a review nor sufficiently archived in the files maintained for each state.

When the Certificates of Ascertainment and Vote were received at the OFR, a review of the Certificates for completeness and accuracy was performed by the FL Staff Attorney to ensure the following:

- Certificates of Ascertainment 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, and carry the state seal. Three original Certificates (or one original and two certified copies) are provided to OFR.
- Certificates of Vote 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; Certificates are signed by all of the electors; and two Certificates paired with two original Certificates of Ascertainment are provided to OFR.

During the 2016 Electoral College Process, the OFR identified issues with some of the States' Certificates based on its review, including Certificates signed with auto-pen, Certificates of Ascertainment not paired with Certificates of Vote, and missing pages of Certificates of Ascertainment. However, the OFR did not maintain documentation supporting its review of the Certificates for each state. Additionally, instead of using the tracking database, the OFR relied on emails to document and communicate with States about problems with Certificates. However, there is no assurance email communication captured any and all possible issues. During the audit, the OFR searched email accounts for emails sent to States about issues identified as they were not archived for historical purposes. The use of the tracking database could have remediated this problem.

We also noted the FL Director was responsible for overseeing the review, however there was no evidence supporting the supervision. Without documented reviews and communication with States, the OFR is challenged in managing historical data from past Electoral College processes.

Lack of Accounting for Certificates Provided to Congress

The OFR did not maintain documentation supporting Certificates of Ascertainment and Vote transmitted to Congress. After the general election, the OFR receives either three original or one original, and two certified copies of the Certificates of Ascertainment. The OFR is required to transmit copies of each and every Certificate of Ascertainment received at the OFR to Congress. Additionally, Congressional officers and staff receiving the Certificates are required to acknowledge delivery of the Certificates with a receipt. After the meeting of the electors, the OFR receives two Certificates of Vote paired with two original Certificates of Ascertainment. If Congress is missing any Certificates of Vote from the States, a Certificate will be provided from those received at the OFR.

When the OIG reviewed the OFR files containing the Certificates of Ascertainment and Vote received from each state, we found 35 instances where the States' files were incomplete. The files did not include all of the Certificates of Ascertainment and Vote received at the OFR.

According to management, missing Certificates not received by Congress from States were provided to Congressional officers and staff during a meeting between the OFR and Congressional officers and staff. However, there was no documentation supporting which Certificates were provided including a transmittal letter from NARA or receipt from Congress. There was also no evidence that the OFR transmitted a copy of each and every Certificate of Ascertainment received to the two Houses of Congress as this information was not tracked in the database nor documented in the files. As a result, the OFR cannot assure Certificates are properly accounted for without documentation supporting their transfer. Additionally, a loss of Certificates could erode States' confidence in the OFR.

Results Inaccurately Reported

The OFR's *2016 Popular Vote Totals Report* inaccurately reported the Commonwealth of Virginia's total popular votes. Procedures detailing how to create the reports, source documents, and reviews performed to verify the accuracy of the reports were not documented in the *Electoral College Procedures* (2004 and 2017).

The OFR scans copies of the Certificates of Ascertainment and Vote for each state and posts the Certificates to its website. They also post the following reports:

- *2016 Electoral College Results* - Names of the President, Vice President, Main Opponent, Vice President Opponent, Electoral and Popular Vote counts, and notes regarding the data presented.
- *2016 Popular Vote Totals* - Candidate vote totals by state by party.
- *Electoral Votes for President and Vice President, Votes by State* – Electoral vote by state for President and Vice President.
- *Distribution of Electoral Votes* – Allocation of electoral votes by state.

After the 2012 Electoral College Process, the OFR posted an *Electoral College Members* report documenting the names of the electors, number of electoral votes, state population, and names and total for the majority of the popular votes cast. For the 2016 Electoral College Results, and according to Virginia's Certificate of Ascertainment, Donald J. Trump and Michael R. Pence received 1,769,443 votes. While immaterial, the OFR reported 1,769,433 votes for Virginia on the *2016 Popular Vote Totals* report which resulted in the OFR reporting an inaccurate total popular vote of 62,955,202. Management indicated while it is not their statutory obligation to complete the reports, the reports are updated when they are notified. However, any information reported should be accurate, reviewed, and represent the actual results from the States. Failure to verify the accuracy of information reported to the public on the OFR website and rely on others to report errors may impact the credibility of the OFR's processes.

No Record of Certificates Publically Inspected

There was no documentation to support the Certificates being publically inspected by a citizen. While the OFR updated the *Electoral College Procedures* (2017) requiring citizens to request to inspect Certificates in writing, procedures for documenting the actual public inspections were not documented. We noted after the 2016 Electoral College process, the OFR was contacted by a citizen to inspect Certificates. However, the OFR was unable to provide the OIG documentation supporting the inspection including the written request, date of review, name of reviewer, and certificates reviewed.

Failure to properly account for and safeguard Certificates, may result in their loss and potential damage.

Recommendations

We recommend the Director of the Federal Register:

Recommendation 1: Review and update existing Electoral College procedures to reflect the process that will be used for future Electoral College processes. Ensure the procedures are finalized and communicated prior to the next Electoral College process.

Management Response

NARA concurs with this recommendation. NARA will create a procedures manual to reflect the process the OFR will use to carry out the Archivist's responsibilities under 3 U.S.C. §§ 6, 11, 12, 13 and OFR's internal policies and procedures.

Target Completion Date: November 30, 2018

OIG Analysis

We consider NARA's proposed actions responsive to our report recommendations. All recommendations will remain open and resolved, pending completion of the corrective actions identified above.

Recommendation 2: Document a formalized process for maintaining documentation throughout the Electoral College process, including:

- a. Communications with the Archivist, States and Congress prior to the election;
- b. Logging the receipt and accounting for the number of Certificates received;
- c. Review of the Certificates;
- d. Meetings with Congress throughout the process;
- e. Certificates provided to Congress;
- f. Communication with States during the process, including problems identified with the Certificates and resolution of those problems;
- g. Public inspection of certificates;

- h. Implementing a system that accurately records and tracks all activity related to the Certificates; and
- i. Reporting results.

Management Response

NARA concurs with this recommendation. NARA will add language to the procedures manual referenced in Recommendation 1 to address maintaining documentation related to the Archivist's responsibilities under 3 U.S.C. §§ 6, 11, 12, 13 and OFR's internal policies and procedures.

Target Completion Date: November 30, 2018

OIG Analysis

We consider NARA's proposed actions responsive to our report recommendations. All recommendations will remain open and resolved, pending completion of the corrective actions identified above.

Recommendation 3: Coordinate with NARA offices to formalize a process for receiving the Certificates; including determining which entity should receive the certificates and how the Certificates will be safeguarded when not in the possession of the OFR.

Management Response

NARA concurs with this recommendation. NARA will determine which entity should receive the Certificates. The Director of the Federal Register, in coordination with the NARA's Executive for Business Support Services, will establish processes for receiving and safeguarding Certificates that the States send directly to the Archivist and directly to the Office of the Federal Register. Instructions for implementing the processes will be included in the procedures manual.

Target Completion Date: November 30, 2018

OIG Analysis

We consider NARA's proposed actions responsive to our report recommendations. All recommendations will remain open and resolved, pending completion of the corrective actions identified above.

Recommendation 4: Obtain an independent authoritative review of the requirements in 3 U.S.C. § 6 and 11. Based on the outcome of the review, document the OFR's procedures for receiving Certificates via "registered mail."

Management Response

NARA concurs with this recommendation. NARA will document a legal memorandum addressing the phrase "registered mail." NARA then will request an independent

authoritative review of the requirements in 3 U.S.C. §§ 6 and 11. Based on the results of the review, the procedures manual will be updated to address the receipt of Certificates via “registered mail.”

Target Completion Date: November 30, 2018

OIG Analysis

We consider NARA’s proposed actions responsive to our report recommendations. All recommendations will remain open and resolved, pending completion of the corrective actions identified above.

Recommendation 5: Review ICP reports to ensure accuracy and documentation is available to support information documented in the quarterly reports.

Management Response

NARA concurs with this recommendation. NARA will review the ICP reports to ensure the accuracy of the information contained in the ICP. The Director will also ensure data reported in the ICP reports is supported by documentation.

Target Completion Date: November 30, 2018

OIG Analysis

We consider NARA’s proposed actions responsive to our report recommendations. All recommendations will remain open and resolved, pending completion of the corrective actions identified above.

Recommendation 6: Provide adequate management oversight of the Certificates’ review, reports, and other major decisions or activity performed by staff involved in the Electoral College process.

Management Response

NARA concurs with this recommendation. NARA will create a procedures manual to address management oversight of the OFR’s duties related to the Archivist’s responsibilities under 3 U.S.C. §§ 6, 11, 12, 13 and OFR’s internal policies and procedures.

Target Completion Date: November 30, 2018

OIG Analysis

We consider NARA’s proposed actions responsive to our report recommendations. All recommendations will remain open and resolved, pending completion of the corrective actions identified above.

Appendix A – Acronyms

FL	Legal and Policy Affairs Office
GAO	Government Accountability Office
NARA	National Archives and Records Administration
OIG	Office of Inspector General
OFR	Office of Federal Register

Appendix B – Management Response



Date: FEB 15 2018
To: James Springs, Inspector General
From: David S. Ferriero, Archivist of the United States
Subject: Management's Response to OIG Report 18-AUD-04, *Office of the Federal Register's Administration of the Electoral College Process*

Thank you for the opportunity to provide comments on this final report. We appreciate your willingness to meet with us and to clarify language in the report.

As you are aware, NARA fulfilled its responsibilities for the 2016 Presidential election fully and effectively, although documentation of our processes can be improved.

The Office of the Federal Register (OFR) has begun updating its standard operating procedures and Electoral College Manual to address each of your recommendations. We also agree that more detailed documentation will strengthen the OFR's controls, as well as ensure that the overall process is as efficient as possible, and will prevent the loss of institutional knowledge about the Archivist's statutory role in the Electoral College process.

However, we do not agree that "registered mail", as used in Title 3, chapter 1 of the U.S. Code, is the same as "Registered Mail®." The United States Postal Service has a registered trademark for "Registered Mail®" and has very specific requirements and limitations for using the service. We believe that some States could be prevented from transmitting the required Certificates in a timely manner or by the statutory deadlines, if they accepted the OIG's interpretation of "registered mail." However, we will request an independent authoritative review of the requirements in 3 U.S.C. §§ 6 and 11.

NATIONAL ARCHIVES *and*
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COLLEGE PARK, MD 20740-6001
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We concur with the six recommendations in this audit, and in response, the attachment provides a summary of our proposed actions. As each recommendation is satisfied, we will provide documentation to your office.



DAVID S. FERRIERO
Archivist of the United States

Attachment

**Action Plan Response to OIG Report 18-AUD-04,
Office of the Federal Register's Administration of the Electoral College
Process**

Recommendation 1: We recommend the Director of the Federal Register review and update existing Electoral College procedures to reflect the process that will be used for future Electoral College processes. Ensure the procedures are finalized and communicated prior to the next Electoral College process.

Planned Action: The Director of the Federal Register will create a procedures manual to reflect the process the OFR will use to carry out the Archivist's responsibilities under 3 U.S.C. §§ 6, 11, 12, 13 and OFR's internal policies and procedures.

Target Completion Date: November 30, 2018

Recommendation 2: We recommend the Director of the Federal Register document a formalized process for maintaining documentation throughout the Electoral College process, including:

- a. Communications with the Archivist, States and Congress prior to the election;
- b. Logging the receipt and accounting for the number of Certificates received;
- c. Legal review of the Certificates;
- d. Meetings with Congress throughout the process;
- e. Certificates provided to Congress;
- f. Communication with States during the process, including problems identified with the Certificates and resolution of those problems;
- g. Public inspection of certificates;
- h. Implementing a system that accurately records and tracks all activity related to the Certificates; and
- i. Reporting results.

Planned Action: The Director of the Federal Register will add language to the procedures manual referenced in Recommendation 1 to address maintaining documentation related to the Archivist's responsibilities under 3 U.S.C. §§ 6, 11, 12, 13 and OFR's internal policies and procedures.

Target Completion Date: November 30, 2018

Recommendation 3: We recommend the Director of the Federal Register coordinate with NARA offices to formalize a process for receiving the Certificates; including determining which entity should receive the certificates and how the Certificates will be safeguarded when not in the possession of the OFR.

Planned Action: The Director of the Federal Register will determine which entity should receive the Certificates. The Director of the Federal Register, in coordination with the NARA's Executive for Business Support Services, will establish processes for receiving and safeguarding Certificates that the States send directly to the Archivist and directly to the Office of the Federal Register. Instructions for implementing the processes will be included in the procedures manual.

Target Completion Date: November 30, 2018

Recommendation 4: We recommend the Director of the Federal Register obtain an independent authoritative review of the requirements in 3 U.S.C. § 6 and 11. Based on the outcome of the review, document the OFR's procedures for receiving Certificates via "registered mail."

Planned Action: The Legal Affairs and Policy Division of the Office of the Federal Register will provide the Director with a legal memorandum addressing the phrase "registered mail." The Office of the Federal Register then will request an independent authoritative review of the requirements in 3 U.S.C. §§ 6 and 11. Based on the results of the review, the procedures manual will be updated to address the receipt of Certificates via "registered mail."

Target Completion Date: November 30, 2018

Recommendation 5: We recommend the Director of the Federal Register review ICP reports to ensure accuracy and documentation is available to support information documented in the quarterly reports.

Planned Action: The Director of the Federal Register will review the ICP reports to ensure the accuracy of the information contained in the ICP. The Director will also ensure data reported in the ICP reports is supported by documentation.

Target Completion Date: November 30, 2018

Recommendation 6: We recommend the Director of the Federal Register provide adequate management oversight of the Certificates' legal review, reports, and other major decisions or activity performed by staff involved in the Electoral College process.

Planned Action: As described in our planned action for Recommendation 1, the Director of the Federal Register will create a procedures manual to address management oversight of the OFR's duties related to the Archivist's responsibilities under 3 U.S.C. §§ 6, 11, 12, 13 and OFR's internal policies and procedures.

Target Completion Date: November 30, 2018

Appendix C – Report Distribution List

Archivist of the United States
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Deputy Chief Operating Officer
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Director of Federal Register
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