



February 2020

NATIONAL MEDIATION BOARD

Additional Actions Needed to Fully Implement Prior GAO Recommendations and Improve Agency Management and Oversight

Accessible Version

GAO Highlights

Highlights of [GAO-20-236](#), a report to congressional committees

Why GAO Did This Study

NMB was established under the Railway Labor Act to facilitate labor relations for airline and railway carriers by mediating and arbitrating labor disputes and overseeing union elections. The FAA Modernization and Reform Act of 2012 included a provision for GAO to evaluate NMB programs and activities every 2 years. GAO's previous reports, issued in December 2013, February 2016, and March 2018, included 13 recommendations for NMB based on assessments of policies and processes in several management and program areas. NMB had implemented six of those recommendations previously, leaving seven for our review.

This fourth report examines the (1) extent to which NMB has taken actions to fully implement GAO's remaining recommendations, and (2) other challenges NMB faces in key management areas and in overseeing its operations. GAO reviewed relevant federal laws, regulations, and NMB documents, such as its travel and telework policies; examined arbitration caseload data and the results of NMB's 2019 Organizational Climate Assessment; and interviewed NMB officials.

What GAO Recommends

GAO is making four recommendations, including that NMB document its process for reviewing and monitoring the agency's annual appropriations to ensure effective use of funds, and ~~establish a process for the Board to~~ View [GAO-20-236](#). For more information, contact Tranchau (Kris) T. Nguyen at (202)-512-7215 or nguyentt@gao.gov

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What GAO Found

The National Mediation Board (NMB), which facilitates labor relations for airline and railway carriers, has implemented one of GAO's seven recommendations remaining from past reports (see table). Specifically, NMB has developed a policy to prevent violations of ethics rules regarding outside employment and monitors compliance with that policy. NMB has not yet fully implemented the other six recommendations. For example, NMB has developed some strategies to reduce its arbitration case backlog, but lacks a plan with goals and time frames to complete that work. Similarly, NMB has completed an organizational climate assessment, but still must take additional actions to address employee concerns. By not fully implementing these and other recommendations, NMB remains at risk of not fulfilling its mission in several key areas, including information security and organizational climate.

Status of Open GAO Recommendations to the National Mediation Board

Recommendation area	Status
Ethical standards for outside employment and activities	●
Rail arbitration case backlog	⊗
Organizational climate assessment	⊗
Travel policy	⊗
Telework policy	⊗
Information privacy	⊗
Information security	⊗

● Implemented ⊗ Not fully implemented (ranges from limited progress to substantial progress)

Source: GAO analysis of National Mediation Board documents. | GAO-20-236

Data Table for Status of Open GAO recommendations to the National Mediation Board

Recommendation area	Status
Ethical standards for outside employment and activities	Implemented
Rail arbitration case backlog	Not fully implemented (ranges from limited progress to substantial progress)
Organizational climate assessment	Not fully implemented (ranges from limited progress to substantial progress)
Travel policy	Not fully implemented (ranges from limited progress to substantial progress)
Telework policy	Not fully implemented (ranges from limited progress to substantial progress)
Information privacy	Not fully implemented (ranges from limited progress to substantial progress)
Information security	Not fully implemented (ranges from limited progress to substantial progress)

In this review, GAO found that, in addition to the six unimplemented recommendations, NMB lacks internal controls to effectively manage and oversee its appropriations and consistently follow its audit policies. NMB officials said the agency needed its full funding to address various agency priorities, such as hiring information technology specialists, but NMB did not use all of its funding for fiscal years 2016 through 2019, leaving a total of more than \$4 million unobligated from those years; those funds are not available to NMB for new obligations. Officials said that hiring challenges and uncertainty concerning the agency's final appropriations made managing its budget resources difficult. NMB has a new process to monitor its budget resources, but has not documented that process. Without documenting that process, NMB may not be certain it uses its funding effectively to achieve its hiring and other goals. Additionally, NMB has not consistently followed its audit policy to address deficiencies identified in financial and other audits. For example, NMB did not create specific corrective action plans to address findings from financial or GAO audits. The NMB Board said it relied on senior managers to follow procedures, but the Board is ultimately responsible for ensuring that its managers implement the internal control system. Without a process to effectively oversee and evaluate its adherence to internal controls and its own audit policies, NMB may miss opportunities to achieve objectives, address audit deficiencies, and improve management oversight.

Contents

Letter	1
Background	4
Since 2018, NMB Has Fully Implemented One Open GAO Recommendation, but Additional Actions Are Needed to Fully Address Others and Meet New Information Security Requirements	10
NMB Lacks Effective Internal Controls to Manage and Oversee Its Annual Appropriation and Audit Policy	24
Conclusions	30
Recommendations for Executive Action	31
Agency Comments and Our Evaluation	32
Appendix I: National Mediation Board Documents Compared with Statutory and Policy Requirements	33
Appendix II: Status of National Mediation Board Practices in Information Privacy and Security	36
Appendix III: Comments from the National Mediation Board	39
Text of Appendix III: Comments from the National Mediation Board	44
Appendix IV: GAO Contact and Staff Acknowledgments	49
GAO Contact	49
Staff Acknowledgments	49
Tables	
Data Table for Status of Open GAO recommendations to the National Mediation Board	2
Text of Figure 1: Organization of the National Mediation Board (NMB) and Key Responsibilities	5
Table 1: Status of GAO's Open 2013 and 2018 Recommendations to the National Mediation Board (NMB)	11
Table 2: Number of National Mediation Board (NMB) Rail Arbitration Cases per Fiscal Year, 2016-2019	13
Data table for Figure 2: Fiscal Year (FY) 2019 Rail Arbitration Cases Filed by Unions and Carriers at NMB	16

Table 3: National Mediation Board’s (NMB) Appropriations, Obligations, and Unobligated Balances for Fiscal Years (FY) 2016 – 2019 (dollars in millions)	25
Table 4: GAO Comparison of Key National Mediation Board (NMB) Documents with Federal Laws, Guidance, and Leading Practices	33
Table 5: Extent to Which the National Mediation Board (NMB) Is Following Key Practices for Information Privacy and Security	36

Figures

Figure 1: Organization of the National Mediation Board (NMB) and Key Responsibilities	5
Figure 2: Fiscal Year (FY) 2019 Rail Arbitration Cases Filed by Unions and Carriers at NMB	15

Abbreviations

CFO	Chief Financial Officer
CIO	Chief Information Officer
FedRAMP	Federal Risk and Authorization Management Program
FISMA	Federal Information Security Modernization Act
FMFIA	Federal Managers’ Financial Integrity Act
FTR	Federal Travel Regulation
IG	Inspector General
MOU	Memorandum of Understanding
NLRB	National Labor Relations Board
NMB	National Mediation Board
OGE	Office of Government Ethics
OMB	Office of Management and Budget
OPM	Office of Personnel and Management
RLA	Railway Labor Act

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February 14, 2020

The Honorable Roger Wicker
Chairman
The Honorable Maria Cantwell
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Lamar Alexander
Chairman
The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Peter A. DeFazio
Chairman
The Honorable Sam Graves
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

The National Mediation Board's (NMB) mission is to prevent disruption to interstate commerce, and NMB provides a variety of services to the airline and railway industries to help resolve labor disputes and avoid work stoppages. More than 12 million jobs are directly supported by the rail and air industry, and millions of jobs are dependent on the ability to travel and transport goods being uninterrupted, according to NMB's 2018 Annual Performance and Accountability Report. Created by a 1934 amendment to the Railway Labor Act (RLA), NMB oversees union elections and provides mediation, arbitration, and other services to resolve railroad and airline labor disputes, including disputes over issues such as working conditions, rates of pay, and union representation.¹

¹The RLA was enacted in 1926 to provide a framework for ensuring harmonious railroad labor relations, and amended in 1936 to also cover the airline industry. It establishes several key principles, including the requirement to "exert every reasonable effort" to settle disputes to avoid interruption to commerce or to the operation of any railroad or airline, and procedures for resolving disputes over pay, rules, or working conditions during collective bargaining, as well as disputes resulting from the interpretation or application of existing collective bargaining agreements. 45 U.S.C. §§ 152, First, Sixth, 153 and 155.

Currently, NMB provides services to management and labor unions for approximately 150 commercial airline carriers and more than 500 railway carriers and their unions. NMB has 51 full-time staff positions and had a fiscal year 2019 appropriation of approximately \$14 million.

The FAA Modernization and Reform Act of 2012 further amended the RLA and included a provision for GAO to evaluate and audit the programs, operations, and activities of NMB every 2 years.² We conducted three prior reviews of the NMB in which we made 13 recommendations in key management areas. Also in the first of the three reports, we suggested that Congress consider authorizing an appropriate federal agency to provide independent audit and investigative oversight at NMB.

This fourth review of NMB reports on:

1. the extent to which NMB has taken actions to fully implement GAO's prior recommendations; and
2. other challenges NMB faces in key management areas and overseeing its operations.

To address both of our objectives, we reviewed relevant federal laws, regulations, and guidance, along with previous GAO work. Based on prior GAO recommendations and our current work, we assessed NMB documents related to key areas such as information privacy, information security, travel, telework, arbitration, audit policy, and budget. We evaluated this information using criteria such as NMB's 2018-2022 Strategic Plan; Standards for Internal Control in the Federal Government;³ provisions of the Federal Information Security Modernization Act of 2014 (FISMA);⁴ the Office of Management and Budget's (OMB) 2011

²Pub. L. No. 112-95, § 1004, 126 Stat. 11, 147 (creating 45 U.S.C. § 165).

³GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

⁴Information security program and evaluation requirements for federal agencies were established by the Federal Information Security Management Act of 2002 (FISMA 2002), enacted as title III, E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2946. The Federal Information Security Modernization Act of 2014 (FISMA 2014), enacted as Pub. L. No. 113-283, 128 Stat. 3073, largely superseded FISMA 2002. As used in this report, FISMA refers both to FISMA 2014 and to those provisions of FISMA 2002 that were either incorporated into FISMA 2014 or were unchanged and continue in full force and effect.

memorandum on Security Authorization of Information Systems in Cloud Computing Environments;⁵ OMB Circular A-11 on Preparation, Submission, and Execution of the Budget; and OMB Circular A-123 on Management's Responsibility for Enterprise Risk Management and Internal Control,⁶ and Agency Guide for Federal Risk and Authorization Management Program (FedRAMP) Authorizations.⁷ Appendix I provides a list of key NMB documents we reviewed, and the associated criteria we used to evaluate NMB's efforts in several management areas. These areas included ones in which we had previously made recommendations and those in which NMB faces challenges in managing its operations.

Likewise, for both objectives, we reviewed data from NMB's 2019 Organizational Climate Assessment and, for our first objective, we reviewed data from NMB's Arbitrator Workspace System. In 2019, NMB worked with the Office of Personnel Management (OPM) to conduct an organizational climate assessment, during which it sent survey questionnaires to all eligible NMB employees (95 percent of eligible employees responded). The survey provided data on several dimensions of NMB employee perceptions, such as ethics, resources, rewards, and supervision. After reviewing the survey data collection and analysis methods, we determined data from this survey were sufficiently reliable for our purposes. In addition, NMB provided us its Arbitrator Workspace System, which tracks the number of pending, open, and closed arbitration cases at NMB by fiscal year, for 2016 through 2019. After reviewing the methods NMB uses to collect and record this data, we determined that data from this system were sufficiently reliable for our purposes.

We interviewed NMB officials and NMB Board members to determine what NMB has done to address each of our open recommendations (objective 1), as well as to determine any additional management challenges (objective 2). We describe the status of NMB's actions to address our open recommendations as either "fully implemented" or "not fully implemented." We use the term "fully implemented" to describe those recommendations where NMB has taken all of the required actions to

⁵OMB, *Security Authorization of Information Systems in Cloud Computing Environments* (Washington, D.C. Dec. 8, 2011).

⁶OMB Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, (July 15, 2016).

⁷FedRAMP, *Agency Guide for FedRAMP Authorizations: How to Functionally Reuse an Existing Authorization Version 2.0* (Washington, D.C.: Dec. 7, 2017).

address the recommendation. Conversely, we use the term “not fully implemented” to describe recommendations where additional actions are needed to address the recommendation. The term “not fully implemented” ranged from recommendations where NMB had taken limited actions to address the recommendation, to ones where NMB had made substantial progress in addressing the recommendation. We interviewed external and internal stakeholders, including industry groups, rail and air carriers, unions, and agency ombudsmen to obtain their views on challenges the agency faces. For railway carrier and union interviews, we selected carriers and unions that represented a majority of cases in NMB’s rail arbitration case backlog. We also coordinated with an industry group that represents railway carriers. For airline carrier interviews, we selected two of the top four carriers with the largest number of enplaned passengers per year, and also coordinated with an industry group that represents airline carriers. We selected airline unions that collectively represent a majority of air carrier union members. We also interviewed an NMB advisory group that represents both the airline and railway industries and airline and railway unions. The results of these interviews are not generalizable to all NMB stakeholders.

We conducted this performance audit from February 2019 to February 2020 in accordance with generally accepted government auditing standards. Those standards require that 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 that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

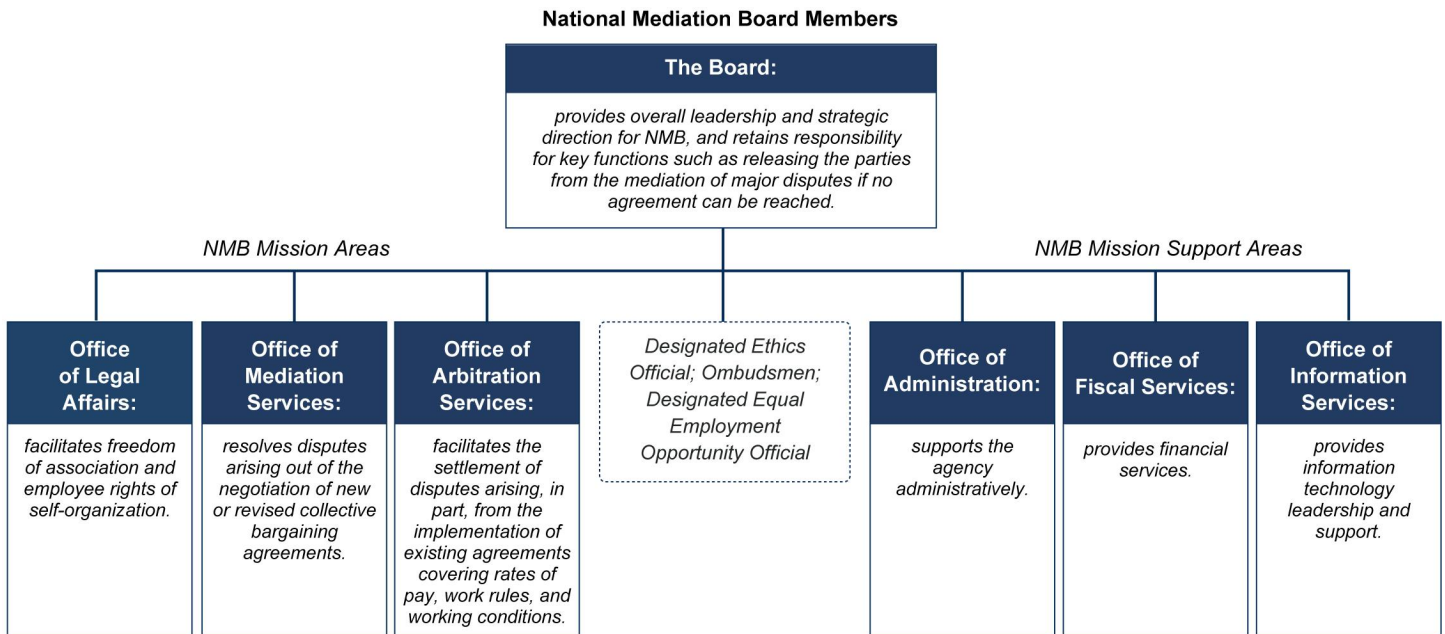
NMB’s Organization and Mission

NMB is headed by a three-member board, with each member appointed by the President and confirmed by the Senate for a term of 3 years.⁸ The board members provide overall leadership and strategic direction for NMB, and retain responsibility for key functions such as releasing parties

⁸45 U.S.C. §154, First. No more than two members of the board can be from the same political party. The board members are required to designate a chairman annually. 45 U.S.C. §154, Second. Although appointed for 3 years, board members can serve until replaced.

from the mediation of major disputes if no agreement can be reached. In May 2018, NMB reorganized various agency components to improve its management and oversight of agency operations. This resulted in the creation of three mission areas and three mission support areas. The Offices of Fiscal Services and Information Services were newly created as a result of the delegation order (see fig. 1).

Figure 1: Organization of the National Mediation Board (NMB) and Key Responsibilities



Source: National Mediation Board (NMB). | GAO-20-236

Text of Figure 1: Organization of the National Mediation Board (NMB) and Key Responsibilities

- **Organization:** National Mediation Board (NMB) Members
 - **The Board:** provides overall leadership and strategic direction for NMB, and retains responsibility for key functions such as releasing the parties from the mediation of major disputes if no agreement can be reached.
 - Designated Ethics Official; Ombudsmen; Designated Equal Employment Opportunity Official
 - **NMB Mission Areas:**
 1. Office of Legal Affairs: facilitates freedom of association and employee rights of self-organization.
 2. Office of Mediation Services: resolves disputes

arising out of the negotiation of new or revised collective bargaining agreements.

3. Office of Arbitration Services: facilitates the settlement of disputes arising, in part, from the implementation of existing agreements covering rates of pay, work rules, and working conditions.

- **NMB Mission Support Areas:**

1. Office of Administration: supports the agency administratively.
2. Office of Fiscal Services: provides financial services.
3. Office of Information Services: provides information technology leadership and support.

Source: National Mediation Board (NMB). | GAO-20-236

In June 2019, NMB hired a Chief Financial Officer (CFO), who serves as the Director of the Office of Fiscal Services. The CFO has authority over NMB's budget, accounting, and financial auditing functions.⁹ In January 2019, NMB hired a Chief Information Officer (CIO),¹⁰ who serves as the Director of the Office of Information Services. The CIO has authority over NMB's information technology and related systems, including its electronic record keeping functions. All offices, along with NMB's Designated Agency Ethics Official, report directly to the Board. Previously, the Offices of Administration, Mediation, and Arbitration reported to a Chief of Staff, a position that was eliminated in 2018.

NMB's overall mission is to provide for the independence of air and rail carriers and employees in matters of self-organization, help prevent interruption to commerce conducted through the operation of those carriers, administer adjustment boards,¹¹ as well as develop complementary strategies to resolve disputes. NMB has three program areas to fulfill its mission:

⁹With the hiring of the new CFO, the Board plans to consider the extent to which NMB will continue to outsource any of its budget, accounting, and financial auditing functions to Department of Treasury's Bureau of Fiscal Services.

¹⁰Prior to the creation of this office, an NMB official was acting in this capacity within the office of the chief of staff.

¹¹Adjustment boards provide for arbitration of unresolved grievances in the railroad and airline industries. These boards are generally made up of an equal number of carrier and union representatives, and a neutral arbitrator selected by the parties.

- **Representation.** Rail or air carrier employees select unions for the purposes of collective bargaining through secret-ballot elections conducted by NMB. NMB is charged with resolving any questions concerning representation of a specific craft or class¹² through the agency's Office of Legal Affairs, and has sole jurisdiction to decide these disputes.¹³
- **Mediation and Alternative Dispute Resolution.** The RLA provides for mediation to help resolve disputes between management and labor during collective bargaining negotiations.¹⁴ When rail or air carriers and unions cannot reach agreement on the terms of a new or revised collective bargaining agreement – such as working conditions or rates of pay – either party can apply for NMB's mediation services to resolve their differences. Additionally, NMB may impose mediation if it finds that resolving the dispute is in the public's interest. NMB also offers grievance mediation to parties as an alternative way to resolve disputes filed for grievance arbitration. Although mediation is voluntary, it is a less expensive approach to resolving grievances, using NMB's existing mediation staff rather than outsourcing—and paying—external arbitrators.
- **Arbitration.** The RLA also offers grievance arbitration to help resolve disagreements between carriers and unions over how to interpret and apply provisions of existing collective bargaining agreements.¹⁵ NMB does not directly provide arbitration services, but rather maintains a list of registered arbitrators from which the parties can select someone to review and decide their case. In the airline industry, the parties pay the costs of arbitration. In the railroad industry, however, consistent with the requirements of the RLA, NMB pays the fee and travel expenses of the arbitrator.¹⁶

¹²A craft or class consists of those employees who perform the same duties or functions at a given carrier, such as locomotive engineers or pilots.

¹³45 U.S.C. § 152, Ninth.

¹⁴45 U.S.C. § 155, First.

¹⁵45 U.S.C. § 153, First (i). Unless otherwise noted, in this report, when we refer to arbitration, we are referring to grievance arbitration.

¹⁶45 U.S.C. § 157, Second (e).

Executive Branch Oversight of the NMB

The Office of Management and Budget (OMB) and the Office of Personnel Management (OPM) have key oversight responsibilities for all federal agencies, including NMB.¹⁷ OMB is responsible for the oversight of NMB's management and information technology. OPM is the central personnel management agency of the federal government charged with administering and enforcing civil service laws, regulations, and rules. OPM annually administers surveys to federal employees across the government, including NMB, to solicit their views on their agencies including agency leadership, collaboration, and other issues. OPM also offers various services to agencies to evaluate organizational climate.

Federal law does not establish an Inspector General (IG) for NMB.¹⁸ However, the agency signed a Memorandum of Understanding (MOU) in 2018 with the National Labor Relations Board's (NLRB) Office of Inspector General to provide independent audit and investigative oversight. In the MOU, the NLRB IG agreed to (1) operate a hotline for employees to anonymously submit information—via email or telephone messages—regarding fraud, waste, and abuse involving the NMB's programs and operations, and (2) take action to address complaints, such as inform the appropriate law enforcement agency or the NMB Chairman or Board Members, as appropriate.¹⁹

¹⁷Among other things, OMB is responsible for preparing and implementing the President's annual budget.

¹⁸The Inspector General Act of 1978, as amended, establishes IGs within various departments and agencies. Pub. L. No. 95-452, 92 Stat. 1101 (codified as amended at 5 U.S.C. App). IGs have broad access to all aspects of their respective agency's operations and have a mission, among other things, to conduct audits and investigations, to promote economy, efficiency, and effectiveness in the administration of programs, to prevent and detect fraud and abuse, and to report periodically to the head of the agency and to Congress.

¹⁹The MOU does not call for the NLRB IG to commence audits on its own, which is different from the mission of IGs at agencies that have an IG within the agency.

Federal Risk and Authorization Management Program (FedRAMP) Requirements

FedRAMP is a government-wide program that provides authorizations²⁰ for use of cloud services.²¹ As an executive agency that uses a cloud service approved through FedRAMP, NMB is subject to related requirements. Through a December 2011 memorandum, OMB established requirements for executive agencies to use FedRAMP when conducting security authorizations for agency use of cloud services.²² In addition, the FedRAMP Program Management Office issued guidance in 2017 that specifies authorization requirements, including that an agency should document the authorization of the agency system supported by a cloud service approved through FedRAMP and the related cloud service used by the agency.²³

Prior GAO Work

GAO has issued three prior reports on NMB and collectively had 13 recommendations. NMB had previously implemented six of those recommendations, and seven remained in our current review.²⁴

²⁰An authorization is issued by a federal department, office, or agency for the use of a cloud service provider.

²¹Cloud computing provides on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services). Cloud computing offers many advantages over traditional computing, such as enabling federal agencies to consolidate and provide new services faster, while reducing information technology costs.

²²OMB, *Security Authorization of Information Systems in Cloud Computing Environments*.

²³FedRAMP Program Management Office, *Agency Guide For FedRAMP Authorizations: How to Functionally Reuse an Existing Authorization Version 2.0* (Washington, D.C.: Dec. 7, 2017).

²⁴The six recommendations NMB had previously implemented include developing strategic, performance, workforce, and audit plans, as well as procurement policies. Therefore, we do not discuss those in this report. For more information, see GAO, *National Mediation Board: Progress Made on GAO Recommendations, but Actions Needed to Address Management Challenges*, [GAO-18-301](#) (Washington, D.C.: Mar. 22, 2018); GAO, *National Mediation Board: Progress Made on Some GAO Recommendations to Strengthen Operations, but Key Controls Continue to Be Needed*, [GAO-16-240](#) (Washington, D.C.: Feb. 12, 2016); and GAO, *National Mediation Board: Strengthening Planning and Controls Could Better Facilitate Rail and Air Labor Relations*, [GAO-14-5](#) (Washington, D.C.: Dec. 3, 2013).

- We issued our first report in December 2013 with seven recommendations in key management areas, including strategic planning, performance measurement, and workforce planning.²⁵ We also suggested that Congress consider authorizing an IG at an appropriate federal agency to provide independent audit and investigative oversight at NMB.
- We issued a second report in February 2016, which found that NMB needed to take additional actions to implement the seven recommendations from our December 2013 report. We also made one additional recommendation related to procurement.²⁶
- We issued our third report in March 2018, which found that NMB had taken action to implement four of the recommendations from our December 2013 report and the recommendation from our February 2016 report. However, additional actions were needed to close the remaining three recommendations.²⁷ We also made five additional recommendations related to the backlog of arbitration cases, outside employment, organizational climate, and NMB's travel and telework policies.

Since 2018, NMB Has Fully Implemented One Open GAO Recommendation, but Additional Actions Are Needed to Fully Address Others and Meet New Information Security Requirements

NMB Has Fully Implemented One of GAO's Seven Open Recommendations, but Shortcomings Persist in Other Areas

NMB implemented a recommendation from GAO's 2018 report to create and monitor requests for outside employment, but has not taken action to fully implement the remaining six recommendations from GAO's past

²⁵[GAO-14-5](#).

²⁶[GAO-16-240](#).

²⁷[GAO-18-301](#). After the issuance of the report in 2018, GAO determined that NMB had implemented one more of the recommendations from the 2013 report.

reviews (see table 1). By not fully implementing these recommendations, NMB remains at risk in several areas key to its mission, including information privacy and security and organizational climate, among others.

Table 1: Status of GAO’s Open 2013 and 2018 Recommendations to the National Mediation Board (NMB)

GAO’s Recommendations (year) ^a	Status of recommendations as of January 2020 ^b	NMB actions taken to implement recommendations and additional actions needed
Ethical Standards for Outside Employment and Activities (2018) – Develop and implement policies for approval and monitoring of employee requests for outside employment and other outside activities to prevent violations of ethics rules, consistent with Office of Government Ethics standards of conduct and federal internal control standards.	Implemented (May 2019)	NMB developed and is monitoring these policies. No additional actions are needed.
Rail Arbitration Case Backlog (2018) – Develop and execute a plan to address the rail arbitration case backlog	Not fully implemented	NMB developed strategies to address the backlog and has decreased the backlog, but must still develop a plan with specific goals and timeframes to track progress against specific measures of success.
Organizational Climate Assessment (2018) – Complete and take actions on the organizational climate assessment and survey results as a means to address employee concerns.	Not fully implemented	NMB has developed and administered an organizational climate assessment, but must still take additional actions to address the results of that assessment.
Travel Policy (2018) – Revise NMB’s travel policy and develop appropriate internal controls to ensure compliance with federal requirements for travel.	Not fully implemented	NMB has taken steps to improve its internal controls related to travel, but must still revise its travel policy to make it more consistent with federal requirements for travel.
Telework Policy (2018) – Revise NMB’s telework policy and develop appropriate internal controls to ensure compliance with federal requirements for telework.	Not fully implemented	NMB has taken steps to track its telework training and agreements, but must still revise its telework policy to make it more consistent with federal telework requirements and its current organization structure.
Information Privacy (2013) – Establish a privacy program that includes conducting privacy impact assessments and issuing system of record notices for systems that contain personally identifiable information.	Not fully implemented	NMB has taken some steps to implement information privacy practices, such as designating a privacy officer, but still must take additional steps, such as specifying whether a system of records notice would be developed.
Information Security (2013) – Develop and fully implement key components of an information security program in accordance with FISMA. ^c	Not fully implemented	NMB has taken some steps to further implement key information security practices and has hired a Chief Information Officer to aid in those efforts. However, NMB must still take other steps, such as providing risk assessment documentation of its enterprise network for fiscal year 2019.

Source: GAO, *National Mediation Board: Progress Made on GAO Recommendations, but Actions Needed to Address Management Challenges*, GAO-18-301 (Washington, D.C.: Mar. 22, 2018). | GAO-20-236

^aOver the course of GAO’s 2013, 2016, and 2018 NMB reviews, GAO issued 13 recommendations. NMB previously implemented six of those recommendations, including recommendations to develop strategic, performance, workforce, and audit plans, procurement policies, and collect data on the

types of grievances filed. Because these recommendations have been implemented, we do not discuss them in this report. See [GAO-18-301](#), [GAO-16-240](#), and [GAO-14-5](#) for more information.

^bThe status of “not fully implemented” describes recommendations for which NMB has taken action to address the recommendation, but more action is required to satisfy the recommendation. This status represents a range of progress, from limited progress to substantial progress.

^cInformation security program and evaluation requirements for federal agencies were established by the Federal Information Security Management Act of 2002 (FISMA 2002), enacted as title III, E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2946. The Federal Information Security Modernization Act of 2014 (FISMA 2014), enacted as Pub. L. No. 113-283, 128 Stat. 3073, largely superseded FISMA 2002. As used in this report, FISMA refers both to FISMA 2014 and to those provisions of FISMA 2002 that were either incorporated into FISMA 2014 or were unchanged and continue in full force and effect.

Ethical Standards for Outside Employment and Activities

GAO 2018 Recommendation: Develop and implement policies for approval and monitoring of employee requests for outside employment and other outside activities to prevent violations of ethics rules, consistent with Office of Government Ethics standards of conduct and federal internal control standards.

Source: [GAO-18-301](#)

Since our 2018 review, we found that NMB has developed and implemented policies for approving employee requests for outside employment and the agency monitors these requests. We reported in 2018 that NMB did not have a policy for approving and monitoring employee requests for outside employment consistent with the Office of Government Ethics (OGE) standards of conduct and federal internal controls.²⁸ NMB also did not systematically track or monitor when managers or board members approved such activities for an employee. We recommended that establishing an outside employment policy and a system to monitor activities would help to prevent violations of ethics rules.

In our current review, we found that NMB has implemented our recommendation. NMB worked with OGE to develop a policy on outside employment that details how employees should submit outside employment requests, consistent with OGE standards.²⁹ NMB has incorporated the policy into annual and new employee ethics training. Once NMB approves an outside employment request, the agency

²⁸OGE provides overall leadership and oversight of the executive branch ethics program designed to prevent and resolve conflicts of interest. Among other responsibilities, OGE holds executive agencies accountable for carrying out an effective ethics program by monitoring agency compliance with executive branch ethics program requirements, and monitoring senior leaders' compliance with individual ethics commitments.

²⁹NMB issued this policy jointly with OGE. Supplemental Standards of Ethical Conduct for Employees of the National Mediation Board (May 29, 2019).

monitors outside employment through employees’ annual financial disclosure forms.

Rail Arbitration Case Backlog

GAO 2018 Recommendation: Develop and execute a plan to address the rail arbitration case backlog.

Source: [GAO-18-301](#)

Since our 2018 review, we found that NMB has used several strategies to reduce its backlog by 57 percent; however, without a plan establishing specific goals and timeframes, it is difficult to track the agency’s progress against specific measures of success. We reported in 2018 that NMB’s rail grievance arbitration case backlog had more than tripled since 2011, and that NMB did not have a specific plan and related processes to address it. However, identifying and assessing the risks associated with the backlog and developing a plan to effectively manage it are key to implementing effective risk management.

In our current review, we found that NMB has implemented several initiatives to reduce the rail grievance arbitration case backlog, including removing older cases, using lead cases—cases that have the same parties and similar fact patterns, allowing a decision from one case to settle others—and promoting an “Ambassador Program” to move cases from grievance arbitration to grievance mediation. NMB officials credit these strategies with reducing the backlog from a height of 8,550 cases at the end of fiscal year 2017 by 4,852 cases—about 57 percent—to 3,698 cases as of the end of fiscal year 2019 (see table 2).

Table 2: Number of National Mediation Board (NMB) Rail Arbitration Cases per Fiscal Year, 2016-2019

Fiscal Year	Number of cases at the beginning of the fiscal year	Number of new cases filed in the fiscal year	Number of cases closed in the fiscal year ^a	Number of cases at the end of the fiscal year
2016	6,240	4,777	3,560	7,457
2017	7,457	4,152	3,059	8,550
2018	8,550	4,280	6,422	6,408
2019	6,408	3,859	6,569	3,698

Source: GAO analysis of National Mediation Board data. | GAO-20-236

^aClosed cases are cases that have been resolved through arbitration or have been closed or removed using other measures, such as removing older cases.

- 1. Removing older cases.** NMB officials said that NMB has removed older arbitration cases that were filed, but had not yet been moved

forward to arbitration.³⁰ Specifically, officials explained that, in late summer 2018, NMB removed 400 cases from the backlog that were 3 years or older. NMB officials said that the agency subsequently removed 1,025 cases that were 2 years or older. NMB officials told us that parties may choose to re-file a removed case. NMB has not received objections from unions and carriers regarding the removal of older cases.

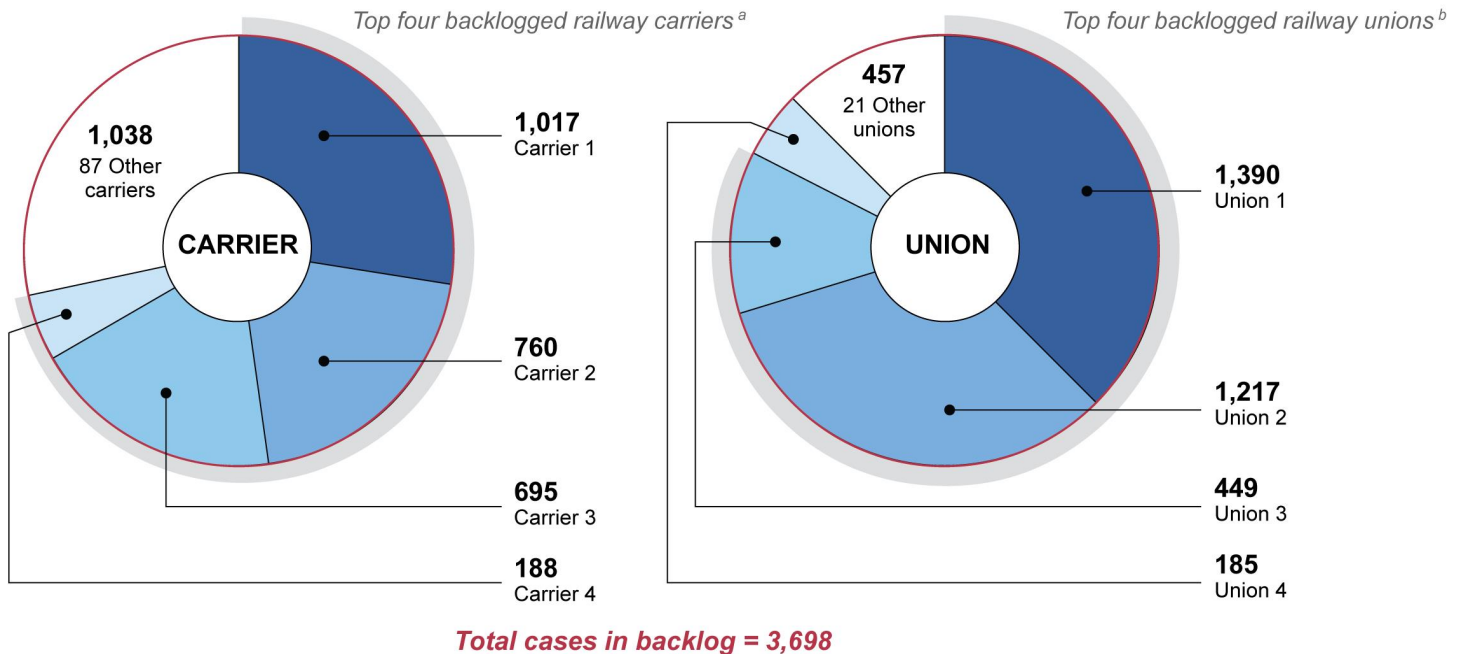
2. **Using lead cases:** For lead cases, NMB and the parties agree that the decision for one case will be used to settle other cases with similar fact patterns. For example, officials said that a similar fact pattern would be cases that had the same union and carrier and dealt with the same underlying issue. In fiscal year 2017, NMB used the decisions for nine lead cases to settle 4,240 additional claims. In fiscal year 2018, NMB used the decisions for four lead cases to settle 600 additional claims.
3. **Promoting the Ambassador Program.** NMB's Ambassador Program involves NMB reaching out to parties to encourage them to voluntarily move cases from arbitration to grievance mediation. NMB has assigned experienced mediators to carriers and unions as "ambassadors." Unions that have disputes with a carrier can raise the issue through the ambassador in hopes of avoiding the formal arbitration process; in that way, the Ambassador Program may proactively decrease the number of arbitration cases filed. NMB is interested in using the Ambassador Program to resolve multiple claims regarding the same issue, policy, or employment action. NMB officials said in fiscal year 2018, NMB had seven cases in the Ambassador Program and closed six cases. NMB officials said in fiscal year 2019, NMB had four cases in the Ambassador Program; none are closed to date. NMB officials said that the Ambassador Program and the lead case program are related, in that many of the cases moved through the Ambassador Program are lead cases. For example, NMB reported that in fiscal year 2018, one grievance mediation case was used to settle 300 claims. In fiscal year 2017, NMB heard five cases in the Ambassador Program, and the decisions on these cases were applied to 1,951 remaining claims to resolve them.

³⁰NMB officials said that unions and carriers sometimes file cases at NMB to draw the other party's attention to a particular topic. Officials explained that this contributes to the backlog of cases at NMB.

In addition, NMB officials told us a small number of railway carriers and unions file the largest percentage of the grievance arbitration cases (see fig. 2). In fiscal year 2019, four railway carriers represented 72 percent of the backlog, and four railway unions represented 87 percent of the backlog. The Office of Arbitration seeks to coordinate with the organizations with the most arbitration cases to help them move toward mediation or other techniques to decrease the arbitration backlog.

Figure 2: Fiscal Year (FY) 2019 Rail Arbitration Cases Filed by Unions and Carriers at NMB

FY 19 railway arbitration cases in the backlog at National Mediation Board (NMB) by:



Source: GAO analysis of National Mediation Board documents. | GAO-20-236

^a Carriers 1-4 include three of the seven Class 1 railroads, or railroads with operating revenues of approximately \$447.6 million or more.

^b Unions 1-4 represent approximately 300,000 individual union members covered by NMB agreements.

Data table for Figure 2: Fiscal Year (FY) 2019 Rail Arbitration Cases Filed by Unions and Carriers at NMB

FY 19 railway arbitration cases in the backlog at National Mediation Board (NMB) by:

- **Carrier:** Top four backlogged railway carriers (Note: a Carriers 1-4 include three of the seven Class 1 railroads, or railroads with operating revenues of approximately \$447.6 million or more.)

Carrier 1	Carrier 2	Carrier 3	Carrier 4	87 Other Carriers
1,017	760	695	188	1,038

-

Union: Top four backlogged railway unions (Note: b Unions 1-4 represent approximately 300,000 individual union members covered by NMB agreements.)

Union 1	Union 2	Union 3	Union 4	22 Other Unions
1,390	1,217	449	185	457

Total cases in backlog = 3,698

Source: GAO analysis of National Mediation Board documents. | GAO-20-236

Another method NMB reported using to reduce the backlog is to direct otherwise unobligated funding at the end of the fiscal year to fund arbitration cases, in addition to the amount of funds it had initially budgeted for arbitration. Specifically, NMB officials said that the agency allocated at least \$1 million in additional funds in fiscal years 2017, 2018, and 2019 for arbitration cases at the end of each fiscal year, which allowed NMB to fund arbitration for approximately 4,200 more cases overall, closing nearly all of those cases. Officials said that these additional funds came from unfilled full-time equivalent staff position salaries and contracts that NMB did not award. Officials said they do not

anticipate having similar amounts of funding available for arbitration in the future, once NMB hires staff and awards the contracts.

While NMB has implemented various strategies to reduce the rail arbitration case backlog, it has not developed a plan to link the strategies to specific goals or timeframes. GAO's Standards for Internal Control in the Federal Government state that management should define objectives in specific and measurable terms. Further, federal agencies are required to develop annual performance plans that measure performance to reinforce the connection between long-term strategic goals and day-to-day activities of its managers and staff.³¹ NMB's 2018 Annual Performance and Accountability Report does not link NMB's efforts to reduce the backlog to specific and measurable objectives to assess their effectiveness. By developing specific and measurable objectives to reduce the overall backlog or any component thereof, NMB and Congress would be able to more adequately assess NMB's progress in reducing the backlog relative to its goals.

Organizational Climate Assessment

GAO 2018 Recommendation: Complete and take actions on the organizational climate assessment and survey results as a means to address employee concerns.

Source: [GAO-18-301](#)

Since our 2018 review, we found NMB has completed an organizational climate assessment but has not taken actions to address the results of that assessment. We reported in 2018 that surveyed NMB employees expressed concerns about the organizational climate at NMB.³² In addition, NMB's strategic plan called for an organizational climate assessment to be conducted by the end of calendar year 2015 and every 3 years thereafter. However, at the time of our 2018 report, NMB had not conducted such an assessment. In addition, NMB officials said that they did not take action in response to survey results, which had a 59 percent response rate, because they believed the negative responses were attributable to a few employees. GAO recommended that NMB conduct an organizational climate assessment and develop actions to address the results of that assessment.

³¹Pub. L. No. 111-352, 124 Stat. 3866 (2011).

³²This survey was the Federal Employee Viewpoint Survey.

In our current review, we found that NMB conducted an organizational climate assessment and has taken some actions to address the elements identified in the assessment, but must take additional actions to address employee concerns. NMB worked with OPM to conduct an organizational climate assessment in April 2019. The assessment had a response rate of 95 percent. Several NMB officials said the agency achieved a higher response rate than prior surveys because the Board held an all staff meeting to emphasize the importance of taking the assessment. In May 2019, NMB received the results of the organizational climate assessment from OPM. NMB identified a lack of communication across departmental staff as an issue. To address this, NMB directed regular interdepartmental updates, where each quarter a department is given an opportunity to present the activities within that department. NMB officials said that NMB held its first interdepartmental update in October 2019, with the Office of Legal Affairs presenting. The next interdepartmental update is scheduled for February 2020. NMB has identified some additional potential actions to address issues raised by the organizational climate assessment, including directing NMB's CFO to rewrite the travel policy and to work with OPM to identify recommended training for supervisors, among others. However, these potential actions are not finalized and are generally unlinked to timeframes for implementation. By not taking these actions, NMB employees may be less engaged, which may lead to absenteeism or turnover.

Travel Policy

GAO 2018 Recommendation: Revise NMB's Travel Policy and develop appropriate internal controls to ensure compliance with federal regulations.

Source: [GAO-18-301](#)

Since our 2018 review, we found that NMB has not revised its travel policy to be consistent with the Federal Travel Regulation (FTR) issued by the General Services Administration. We reported in 2018 that NMB's travel policy was, in some respects, not consistent with the FTR. NMB management had also granted NMB staff exceptions to the agency travel policy that were not consistent with the FTR. For example, the FTR requires employees to rent the least expensive car available, but a former NMB management official approved the use of a luxury rental car in some cases. Our 2018 report found that without greater oversight of employee travel expenses, NMB may be incurring unnecessary additional expenses for employee travel.

In our current review, we found that NMB has not revised its travel policy to be consistent with the FTR. However, NMB's Office of Fiscal Services

plans to rewrite portions of the travel policy, including clarifying roles and responsibilities of NMB employees and adding a Frequently Asked Questions portion to the policy. NMB officials said the revised policy is expected to be completed in 2020, and will be reviewed by the CFO in consultation with the Office of Legal Affairs prior to its publication. It is unclear the extent to which these changes will make NMB's travel policy consistent with the FTR.

In addition, NMB has taken steps to strengthen its internal controls related to travel, including:

1. **Replacing the Chief of Staff role in travel policy.** In August 2018, NMB replaced references to the eliminated Chief of Staff position in its travel policy to make the Board the decision making body for travel-related issues. This clarification strengthened internal controls because no one individual is singularly responsible for approval.³³
2. **Updating NMB's travel charge card program.** In 2019, NMB transitioned to a new travel charge card program run by the General Services Administration. Both NMB and the Department of Treasury's Bureau of Fiscal Services, which provides accounting services to NMB, routinely monitor the program, including monitoring each employee's use of the travel card to ensure only appropriate official government-related expenses are being charged to the card. The CFO receives reports from this new program.
3. **Issuing an interim procedure.** Separately, NMB has established an interim procedure for disputed claims that sets timeframes for when vouchers must be approved to avoid delays in returning vouchers to travelers. The interim procedure requires travelers to cite the specific regulatory authority to support their disputed claim. The NMB Board is determining whether this procedure should be established officially in the travel policy.

While NMB has made these initial efforts to strengthen internal controls related to travel, such as increasing oversight from the Board, NMB has not revised its travel policy to be consistent with the FTR. For example, NMB has not updated its policy to clarify the use of personal credit cards as discussed in our 2018 review. Without an updated policy consistent with the FTR, NMB may be incurring needless additional expenses for employee travel.

³³[GAO-14-704G](#).

Telework Policy

GAO 2018 Recommendation: Revise NMB's telework policy and develop appropriate internal controls to ensure compliance with federal requirements for telework.

Source: [GAO-18-301](#)

Since our 2018 review, we found that NMB has not yet revised its telework policy, but the agency has collected telework agreements and provided training for teleworking employees. We reported in 2018 that NMB's telework policy is not consistent with the requirements of the Telework Enhancement Act of 2010, which requires employees to take telework training and have signed telework agreements prior to beginning telework, and NMB did not consistently enforce its policy. NMB's telework policy, effective October 2015, did not mention employee telework training nor did management require employees to complete training before entering into a telework agreement, as required by federal law.³⁴ In addition, management allowed employees to telework without a written telework agreement, even though this requirement is specified in NMB's telework policy. NMB agreed to review its policy and make any revisions determined to be necessary.

In our current review, we found that NMB now tracks telework training and agreements to ensure that teleworking employees have telework agreements and completed telework training prior to engaging in telework. However, NMB has not updated its telework policy to be consistent with the requirements of the Telework Enhancement Act of 2010, instead determining after reviewing its policy that a revision was unnecessary. Despite this determination, the telework policy, last updated in October 2015, does not reflect the current structure of NMB: for example, it includes responsibilities for the Chief of Staff, a position that no longer exists. Further, the policy does not mention employee telework training. Until NMB updates its policy, it will continue to be outdated regarding official responsibilities and inconsistent with relevant law.

³⁴5 U.S.C. § 6503(a).

NMB Has Not Fully Implemented Key Information Privacy and Security Practices, or Met Recent Information Security Requirements

Information Privacy

GAO 2013 Recommendation: Establish a privacy program that includes conducting privacy impact assessments and issuing system of record notices for systems that contain personally identifiable information.

Source: [GAO-14-5](#)

Since our 2018 review, we found that NMB has not always followed key information privacy practices to protect personal information federal agencies collect.³⁵ In our 2018 review, we found that NMB did not establish a privacy program that included practices such as conducting privacy impact assessments³⁶ and issuing system of records notices³⁷ for systems that contain personally identifiable information. For example, in our 2018 review, we found that while NMB designated a privacy officer, the agency did not conduct privacy impact assessments for its systems and those of third-party providers containing the agency's personally identifiable information.

In our current review, we found that, of the four key information privacy practices described in our 2013 report, NMB is still following one, partially following two, and minimally following one practice. For example, NMB documented a privacy impact assessment dated July 2018. However, the assessment did not specify whether a system of records notice would be

³⁵We assessed whether NMB is following key federal practices according to three states of actions—(1) following—taking appropriate actions and has a formal plan, policy, or other document; (2) partially following—taking some actions but does not have a formal plan or policy and/or some additional steps must be taken to consider this practice implemented; or (3) minimally following—taking little or no action to address this particular practice. For more information on our evaluation of NMB's information privacy practices in March 2018, see [GAO-18-301](#).

³⁶A privacy impact assessment is an analysis of how information is handled (i) to ensure handling conforms to applicable legal, regulatory, and policy requirements regarding privacy; (ii) to determine the risks and effects of collecting, maintaining, and disseminating information in an identifiable form in an electronic information system; and (iii) to examine and evaluate protections and alternative processes for handling information to mitigate potential privacy risks.

³⁷A system of records is a collection of information about individuals under control of an agency from which information is retrieved by the name of an individual or other identifier.

developed as required by OMB. For additional details on the extent to which NMB is following key information privacy practices, see appendix II.

Information Security

GAO 2013 Recommendation: Develop and fully implement key components of an information security program in accordance with the Federal Information Security Management Act of 2002.

Source: [GAO-14-5](#)

Since our 2018 review, we found that NMB continues to only partially follow the eight key information security practices in accordance with the Federal Information Security Management Act (FISMA).³⁸ These practices include developing and implementing risk-based policies and procedures to ensure compliance with applicable standards and guidance, including system configuration requirements.³⁹ For example, in our 2018 review, we found that, while NMB had its information security policy documented in its April 2016 Information Program Plan, which included risk assessment requirements, NMB had not developed agency-wide policies and procedures on the oversight of its third-party providers that support the operations and assets of the agency, as required by FISMA.

In our current review, we found that, while NMB has created a policy to conduct periodic risk assessments of cyber threats and vulnerabilities, the agency did not provide risk assessment documentation of its enterprise network for fiscal year 2019. NMB officials said that the agency had not fully addressed information security practices due to a lack of resources. NMB officials stated the agency plans to address several of these practices with the targeted completion expected in fiscal year 2020. As a

³⁸Information security program and evaluation requirements for federal agencies were established by the Federal Information Security Management Act of 2002 (FISMA 2002), enacted as title III, E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2946. The Federal Information Security Modernization Act of 2014 (FISMA 2014), enacted as Pub. L. No. 113-283, 128 Stat. 3073, largely superseded FISMA 2002. As used in this report, FISMA refers both to FISMA 2014 and to those provisions of FISMA 2002 that were either incorporated into FISMA 2014 or were unchanged and continue in full force and effect.

³⁹We assessed whether NMB is following key federal practices according to three states of actions—(1) following—taking appropriate actions and has a formal plan, policy, or other document; (2) partially following—taking some actions but does not have a formal plan or policy and/or some additional steps must be taken to consider this practice implemented; or (3) minimally following—taking little or no action to address this particular practice. For more information on our evaluation of NMB’s information security practices in March 2018, see GAO 18-301.

step to further focus on information technology challenges, NMB established the Office of Information Services and, as noted earlier, hired a CIO. While hiring a CIO does not directly address the practices described above, NMB officials said that these actions, along with hiring more staff and making key acquisitions through contracts, will enable NMB to fully follow the practices in the future. For additional details on the extent to which NMB is following key information security practices, including NMB's recent engagement of contractors, see appendix II.

In addition to the gaps in key information security practices discussed above, we found in our current review that NMB has not fully implemented federal requirements related to authorizing the cloud service approved through FedRAMP that the agency uses. OMB defines an authorization to operate as an official management decision where a federal official or officials authorize the operation of information system(s) and accept the risk to agency operations and assets, individuals, and other organizations based on the implementation of security and privacy controls. OMB requires agencies to use FedRAMP processes when granting authorizations to operate for their use of cloud services.⁴⁰ The FedRAMP Program Management Office published guidance in 2017 to describe the process by which agencies can reuse existing authorizations.⁴¹ According to the FedRAMP guidance, agencies should document the authorization of 1) the agency system supported by the cloud service; and 2) the cloud service used by the agency. Additionally, the agency should provide a copy of its authorization letter for the cloud service to the FedRAMP Program Management Office so that the office can verify the agency's use of the service and keep agencies informed of any changes to a provider's authorization status. These steps ensure that federal agencies have made a determination of whether the cloud service provider's risk posture is acceptable for use at that agency.

According to NMB, the agency is using a cloud service that was approved through FedRAMP to support the agency's enterprise network. NMB had documented the authorization of its enterprise network, but NMB had not documented its authorization of the cloud service to demonstrate that it had accepted the risk of using the service. In addition, NMB had not provided the authorization letter for the cloud service to the FedRAMP

⁴⁰OMB, *Security Authorization of Information Systems in Cloud Computing Environments*.

⁴¹FedRAMP, *Agency Guide For FedRAMP Authorizations: How to Functionally Reuse an Existing Authorization Version 2.0* (Washington, D.C.: Dec.7, 2017).

Program Management Office. NMB officials stated that the agency's internal information security guidance did not include procedures to address FedRAMP requirements because the officials were unaware of those requirements.⁴² Without taking these steps, the FedRAMP Program Management Office may not be able to inform NMB, in a timely manner, if its cloud service provider has experienced a security incident.

NMB Lacks Effective Internal Controls to Manage and Oversee Its Annual Appropriation and Audit Policy

NMB has taken steps to improve its agency management and oversight, such as reorganizing some agency mission areas and filling key staff positions; however, it lacks effective internal controls to manage and oversee its annual appropriation and ensure that its audit policy is consistently followed. As a result, the agency did not use funding the Board said is needed to accomplish NMB goals. NMB had about \$4 million in unobligated appropriations in expired accounts in the U.S. Treasury and unavailable to NMB for new obligations from fiscal years 2016 through 2019.⁴³ In addition, NMB has not taken corrective actions to address management deficiencies identified during audits.

⁴²In recent work on cloud security, we noted that 15 agencies reported that they did not always use FedRAMP for authorizing cloud services. Additionally, although OMB required agencies to use the program, it did not monitor agencies' compliance with this requirement. GAO, *Cloud Computing Security: Agencies Increased Their Use of the Federal Authorization Program, but Improved Oversight and Implementation are Needed*, [GAO-20-126](#) (Washington, D.C.: Dec. 12, 2019).

⁴³An obligation is a definite commitment that creates a legal liability of the government for the payment of goods and services ordered or received, or a legal duty on the part of the United States that could mature into a legal liability by virtue of actions on the part of another party beyond the control of the United States. Obligated balances are the amount of obligations already incurred for which payment has not yet been made, while an unobligated balance is the portion of available budget authority that has not yet been obligated. See GAO, *A Glossary of Terms Used in the Federal Budget Process*, [GAO-05-734SP](#) (Washington, D.C.: September 2005). Annual appropriations expire at the end of their period of availability and are then available for only limited purposes, such as making payments or liquidating obligations incurred during the fiscal year for which they were made. After 5 years, any remaining amounts are cancelled.

NMB Lacks Effective Internal Controls to Manage and Oversee Its Annual Appropriations

NMB has not established effective internal controls to assist the agency in managing and overseeing its annual appropriations. NMB has had significant unobligated balances remaining for the last 4 fiscal years, even though officials said they could not accomplish some of the agency’s goals – such as hiring staff and information technology initiatives – due to a lack of financial resources (see table 3). For example, from fiscal years 2016 through 2019, NMB had unobligated balances ranging between approximately \$600,000 to over \$2 million. These are the remaining funds from its appropriations received each year from fiscal year 2016 through 2019.⁴⁴ In total, over 8 percent of NMB’s appropriations for the last 4 fiscal years went unobligated.

Table 3: National Mediation Board’s (NMB) Appropriations, Obligations, and Unobligated Balances for Fiscal Years (FY) 2016 – 2019 (dollars in millions)

National Mediation Board	FY 2016	FY 2017	FY2018	FY 2019
Final Appropriation ^a	\$13.2	\$13.8	\$13.8	\$13.8
Obligations as of September 30 ^b	\$12.3	\$12.2	\$11.3	\$12.8
Unobligated Balances in Expired Accounts in Treasury ^c	\$0.6 ^d	\$1.2 ^e	\$2.1 ^f	\$0.6 ^g

Source: GAO analysis based on NMB data. | GAO-20-236

^aThe final appropriation includes \$400,000 in Presidential Emergency Board funds, which were not used at all in 2017-2019; NMB used about \$120,000 of those funds in 2016. Presidential Emergency Boards can be established for an emergency board when an airline or railway carrier labor dispute threatens substantially to interrupt interstate commerce to such a degree as to deprive any section of the country of essential transportation service, or an emergency board related to unresolved collective bargaining disputes affecting employees on publicly funded and operated commuter railroads.

^bThis amount reflects the obligations as of September 30 for the respective fiscal year.

^cExpired balances remain available for 5 fiscal years for recording, adjusting, and liquidating obligations properly incurred during the budget authority’s period of availability. Amounts not used within this 5-year period are permanently cancelled. For example, these adjustments have ranged between about \$100,000 and \$350,000 over the past several fiscal years. This amount does not include funding for Presidential Emergency Boards because that funding cannot be used for any purpose other than a Presidential Emergency Board.

^dThis amount does not include about \$280,000 in Presidential Emergency Board Funds not used in fiscal year 2016.

⁴⁴NMB’s appropriations consist of “one-year” funds that must be obligated in the fiscal year for which the appropriation was made. Included in its total is \$400,000 in funding for Presidential Emergency Boards, which the agency did not use in 2017, 2018, or 2019; NMB used approximately \$120,000 in 2016.

^eThis amount does not include \$400,000 in Presidential Emergency Board Funds not used in fiscal year 2017.

^fThis amount does not include \$400,000 in Presidential Emergency Board Funds not used in fiscal year 2018.

^gThis amount does not include \$400,000 in Presidential Emergency Board Funds not used in fiscal year 2019.

NMB officials noted that hiring challenges and uncertainty regarding the agency's final appropriation as a result of continuing resolutions—legislation that continues to fund federal agencies until final agency appropriations for a fiscal year are made⁴⁵—kept the agency from obligating funds during those fiscal years to achieve its goals. For example, NMB officials said that the Board did not pursue certain planned hiring, as well as other contract actions and travel, because of uncertainty about the amount of final appropriations that would be available.⁴⁶ GAO has reported that continuing resolutions present challenges for federal agencies, and that agencies may not have enough time to spend funding on high-priority needs such as hiring.⁴⁷

However, given the frequency of continuing resolutions, it is even more important for NMB to develop an effective plan to use its appropriations to accomplish agency goals.⁴⁸ During our review, we found that NMB struggled to plan effectively for contingencies such as funding under continuing resolutions, although NMB's budget request and appropriations were generally consistent for several years. Additionally, NMB officials told us they lacked an effective process to reliably forecast

⁴⁵Continuing resolutions usually specify a maximum rate at which obligations may be incurred, such as the rate from the previous fiscal year.

⁴⁶NMB officials also said that in fiscal year 2017, the agency filled several vacancies internally—not significantly increasing its use of funds—but could not fill other needed positions in the same fiscal year.

⁴⁷GAO, *Budget Issues: Continuing Resolutions and Other Budget Uncertainties Present Management Challenges*, [GAO-18-368T](#) (Washington, D.C.: Feb. 6, 2018). GAO noted that a prior report had found, for example, that officials from two agencies were reluctant to begin the hiring process during the continuing resolution period for fear the time invested would be wasted if the agency received insufficient funding to support the additional staff. See GAO, *Continuing Resolutions: Uncertainty Limited Management Options and Increased Workload in Selected Agencies*, [GAO-09-879](#) (Washington, D.C.: September 24, 2009).

⁴⁸As of fiscal year 2019, in all but 4 of the last 43 years, continuing resolutions were enacted to allow agencies to continue operations until final appropriations decisions were made after the start of the fiscal year. From 2011 through 2019 a total of 36 continuing resolutions were enacted. GAO, *Federal Budgeting*, accessed February 10, 2020, https://www.gao.gov/key_issues/federal_budgeting/issue_summary.

the amount of funding the agency would have remaining at the end of a fiscal year, and we found NMB did not plan effectively to allow the agency to obligate its fiscal year appropriations. NMB officials said the agency waited until the end of the third quarter to assign unobligated funds to other priorities in order to allow for the option of retaining temporary services during periods of high demand. Although NMB was able to reassign at least \$1 million to arbitration work in each of the fourth quarters in 2017, 2018, and 2019, there was insufficient time to use other available funding in additional areas of need.

The Board has taken steps to improve its budget execution process. In particular, the Board has implemented new bi-weekly budget reviews with the CFO meant to help NMB better forecast the agency's available funds, including more reliably predicting the amount of unobligated funds and how to use those funds to meet agency goals. However, these changes have not been incorporated into a formal, written process to help NMB manage its appropriations more effectively to achieve agency goals. One goal under NMB's Strategic Plan is to provide timely, efficient, and responsible stewardship of agency fiscal resources. Federal internal control standards state that internal controls comprise the plans used to fulfill the goals of the agency, and we have reported that maintaining written policies and procedures can help ensure that adequate internal controls are in place.⁴⁹ Further, those standards state that management should obtain reliable financial data on a timely basis to enable effective monitoring. Until NMB establishes and documents an effective plan to manage its appropriations, as well as timely, reliable financial data, it may miss opportunities to achieve its objectives as efficiently and effectively as possible.

NMB Lacks Effective Internal Controls to Ensure that It Consistently Follows Its Audit Policy to Identify and Address Audit Deficiencies

NMB lacks effective internal controls to ensure that it consistently addresses deficiencies identified from financial and other audits. For example, NMB did not follow its own requirements to create corrective action plans to address findings of financial audits or GAO

⁴⁹GAO, *Revolving Funds: Additional Pricing and Performance Information for FAA and Treasury Funds Could Enhance Agency Decisions on Shared Services*, [GAO-16-477](#) (Washington, D.C.: May 10, 2016).

recommendations.⁵⁰ Under agency policy, those corrective action plans should detail major steps for NMB to take, estimated completion dates, and other related information.⁵¹ Although NMB provided its financial auditors and GAO with general plans to address findings and recommendations, those plans have not always included major steps or estimated completion dates, and NMB has not always followed through with the steps it agreed to take.⁵² For instance, NMB's financial auditor noted a deficiency in NMB's internal controls related to financial reporting in 2017, and noted a similar deficiency in 2018 because NMB still had not addressed the problem sufficiently.⁵³ Effective remediation of internal control deficiencies, like those found by GAO and other audits, is essential to achieving the objectives of the Federal Managers' Financial Integrity Act, as amended (FMFIA).⁵⁴ Unless NMB follows its own policy and federal guidance on corrective action plans, it may not do what is needed to address the risks associated with any deficiency.

Likewise, NMB did not follow its policy to circulate draft financial audit findings and provide a draft response to the Board. When NMB received notice of a 2018 draft management letter from its independent financial auditors, the letter was not circulated for over 5 months nor was the Board provided with any draft response to the findings. Moreover, although NMB's Board was notified of the letter's existence in November 2018, the Board did not ask for the letter prior to May 2019, and said instead that they relied on the official in charge of the audit to follow procedure. Federal internal control standards state that management should obtain relevant data, including compliance data, in a timely manner so that they can be used for monitoring, but NMB officials and the

⁵⁰NMB created an audit follow-up policy in response to a prior GAO review. See [GAO-18-301](#).

⁵¹Similarly, OMB Circular A-123 requires that agency corrective action plans address deficiencies in internal control, including critical milestones that affect the overall schedule and performance of the actions needed to resolve deficiencies, including GAO audit findings.

⁵²As mentioned earlier, some of the recommendations that have not yet been implemented were made by GAO in 2013.

⁵³Because the findings of the management letter are not public, we do not note the specific findings here; the auditor characterized the issue as "an additional matter" in the publicly available independent financial auditors' report.

⁵⁴Federal Managers' Financial Integrity Act of 1982 (FMFIA), Pub. L. No. 97-255, 96 Stat. 814, codified as amended at 31 U.S.C. § 3512(c), (d).

Board did not obtain such information, putting the agency at risk for missed opportunities to identify and address audit deficiencies.

Additionally, NMB has not effectively monitored the sufficiency of its internal controls as required under FMFIA. NMB has also not conducted its planned fiscal year 2017 internal controls review of its Office of Mediation or its fiscal year 2018 internal controls review of its Office of Legal Affairs in order to complete its annual review and report under FMFIA.⁵⁵ Monitoring the effectiveness of internal controls provides the basis for an agency's annual assessment and report of internal control, as required by FMFIA.⁵⁶ NMB officials said the agency had not completed those reviews in a timely manner due to the timing of multiple audits occurring at NMB. NMB recently scheduled those reviews for 2020. Without monitoring its internal controls, NMB may not identify and be able to address significant management problems that can impede the agency's ability to achieve its goals.

Although NMB has identified and taken steps to address some of these audit and internal control deficiencies, it has not established an effective process to consistently monitor adherence to its audit policy and federal standards, evaluate the results, and remediate any deficiencies. For example, NMB has revised its audit policy to assign responsibility for audits and related follow-up to the CFO, who is tasked with helping NMB develop appropriate corrective action plans. Additionally, the Board said it addressed the issue of not circulating the audit management letter with the responsible official and changed the protocols for circulating letters for audit findings to include the Board in addition to the CFO. However, these actions, by themselves, do not establish the monitoring activities required by NMB's audit policy and federal internal control standards. Under NMB's new audit policy, the Board has responsibility to provide top-level oversight of NMB's management activities related to audit coordination and follow-up; federal internal control standards require management to establish and operate monitoring activities to monitor the internal control system, evaluate the results, and remediate identified deficiencies on a

⁵⁵To obtain feedback on its system of internal controls for purposes of reporting annually under FMFIA, NMB conducts an internal control review of one of its assessable units each year.

⁵⁶FMFIA requires each executive agency to annually submit a statement as to the adequacy and effectiveness of the agency's internal controls, and to report on material weaknesses in the agency's internal controls and describe a plan and schedule for correcting them. 31 U.S.C. § 3512(d)(2)(A).

timely basis.⁵⁷ Further, FMFIA requires regular evaluation of the sufficiency of an agency's internal controls. The failure of NMB to conduct the necessary reviews to support its annual assertion under FMFIA hampers the agency's ability to identify risks in its internal controls and to correct any associated material weaknesses, as well as deprives Congress of information necessary to oversee the agency. Further, by not following its own policies and federal internal control standards, NMB may miss opportunities to improve its ability to achieve objectives, address audit deficiencies, and improve management oversight.

Conclusions

NMB has fully implemented one of the seven recommendations still open from prior GAO reports: creating standards on outside employment, which will help prevent employee violations of ethics rules. However, while making varying degrees of progress on the others, NMB still has more work to implement all six remaining recommendations. NMB has decreased its backlog of rail arbitration cases, but it has no specific goals against which to measure its progress toward reducing the backlog and ensuring NMB and Congress can adequately assess NMB's resolution of disputes. Likewise, while the Board's implementation of the climate assessment illustrated that it recognizes the need to understand employee concerns regarding communication across teams, agency travel, and training for management, among other things, it has not fully executed plans to address those concerns in order to benefit from that assessment. Finally, while NMB has improved certain aspects of how it implements its travel and telework policies, it has not sufficiently changed the policies themselves to ensure that NMB policies are consistent with the Federal Travel Regulation and the Telework Enhancement Act of 2010, respectively. Moreover, NMB established the Office of Information Services and hired a new CIO to assist NMB in addressing information security and privacy recommendations, but NMB still must change its underlying information policies and procedures, including updating its information privacy policy to reflect the current structure of NMB and perform a review of its system security plans. Additionally, until NMB complies with the recent FedRAMP requirements, its data may be at greater risk in the event of a security incident. Without fully implementing

⁵⁷NMB's new audit policy more explicitly requires the Board to receive draft audit findings and respond to them, though the Board had a similar role in the prior policy when these deficiencies occurred.

the remaining six recommendations and addressing the recent FedRAMP requirements, NMB is missing opportunities to mitigate information security risks and improve its own management and performance.

Moreover, NMB faces challenges in managing and overseeing its annual appropriation and audit policy as a result of ineffective internal controls. Specifically, as a result of ineffective internal controls for managing and overseeing its annual appropriation, NMB has forgone several million dollars in funding that could have been used to accomplish agency goals. While continuing resolutions can make it difficult for agencies to achieve hiring and other goals, until NMB develops a written plan to document NMB's process for reviewing and monitoring the agency's annual appropriation to effectively manage its budgetary resources and spending, NMB will likely continue to miss opportunities to accomplish its goals. Similarly, until NMB establishes a specific process for the Board to monitor and evaluate NMB's adherence to audit protocols, NMB will not be well positioned to address audit recommendations from its financial auditors and GAO, hindering efforts to improve its operations. While NMB officials have told us that they did not have the resources for certain changes that we recommended, such as information security and privacy improvements, they had more resources than they actually used, as evidenced by unused appropriations. Given the range of management issues that have remained unaddressed over the past 6 years, NMB should ensure their available resources are used effectively.

Recommendations for Executive Action

We are making the following four recommendations to the National Mediation Board (NMB):

1. The Chairman of the NMB should document NMB's authorizations for its use of cloud services approved through FedRAMP and submit the authorizations to the FedRAMP Program Management Office.
(Recommendation 1)
2. The Chairman of the NMB should update NMB's security policies and procedures to include FedRAMP's authorization requirements.
(Recommendation 2)
3. The Chairman of the NMB should develop a written plan to document NMB's process for reviewing and monitoring the agency's annual appropriation to ensure that funds are used effectively.
(Recommendation 3)

4. The Chairman of the NMB should establish a process for the Board to effectively monitor and evaluate NMB's adherence to audit protocols and implementation of actions to address audit recommendations. (Recommendation 4)

Agency Comments and Our Evaluation

We provided a draft of this report to the National Mediation Board (NMB) for review and comment. The agency provided written comments, which are reproduced in their entirety in appendix III. NMB also provided technical comments, which we incorporated as appropriate. NMB agreed with our four recommendations, and stated that it would take actions to address them. With regard to our first two recommendations concerning the Federal Risk and Authorization Management Program authorizations, NMB stated that it plans to complete the required actions by the end of fiscal year 2020. While NMB stated that it would take actions to address our third and fourth recommendations, concerning improvements to better monitor its annual appropriations and adhere to audit protocols to implement audit recommendations, respectively, NMB did not provide a timeframe for when these actions would be completed. NMB also said that it is taking actions to fully implement the remaining recommendations from our prior reports concerning its rail arbitration case backlog, organizational climate assessment, travel and telework policies, and information privacy and security.

We are sending copies of this report to the appropriate congressional committees, NMB, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-7215 or nguyentt@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.



Tranchau (Kris) T. Nguyen
Director
Education, Workforce, and Income Security

Appendix I: National Mediation Board Documents Compared with Statutory and Policy Requirements

Table 4: GAO Comparison of Key National Mediation Board (NMB) Documents with Federal Laws, Guidance, and Leading Practices

Management Area	NMB Documents Reviewed	Federal Laws and Guidance and Previous GAO Work
Outside Employment	National Mediation Board Policy #2100 Employee Code of Conduct Supplemental Standards of Ethical Conduct for Employees of the National Mediation Board ^a	GAO Standards for Internal Control in the Federal Government ^b Standards of Ethical Conduct for Employees of the Executive Branch ^c
Information Privacy and Security	System Security Plan: National Mediation Board Enterprise Cloud (March 2016) Plan of Actions and Milestones (January 2018) NMB Policy #8200 Privacy Policy (October 2017) NMB Information Program Plan (April 2016) Policy #6450 Continuity of Operations (COOP) Plan (March 2016) Information Technology Security Education, Awareness, and Training (ITSEAT) Standard and Implementation Guidelines (April 2016) NMB Admin – Standard Operating Procedures (June 2016) Security Assessment and Authorization Package: Enterprise Cloud General Support System (May 2016) Privacy Impact Assessment (July 2018) NMB 2017 Information System Risk Assessment (October 2017) 2017 National Mediation Board Enterprise Cloud (NMBEC) Security Assessment (November 2017) NMB Delegation Order (August 2018) ^d	Federal Information Security Modernization Act of 2014 (FISMA) ^e The Privacy Act of 1974 ^f E-Government Act of 2002 ^g National Institute of Standards and Technology, Security and Privacy Controls for Information Systems and Organizations ^h Office of Management and Budget (OMB) Memoranda M-02-01, M-03-22, M-16-24 ⁱ OMB Memorandum on Cloud Authorization ^j Agency Guide for FedRAMP Authorizations: How to Functionally Reuse an Existing Authorization ^k

Appendix I: National Mediation Board Documents Compared with Statutory and Policy Requirements

Rail Arbitration	NMB's rail arbitration data for fiscal years 2016 – 2019 ^f	GAO, Standards for Internal Control in the Federal Government tm GAO, Managing for Results: Measuring Program Results that Are Under Limited Federal Control ^{ln}
Organizational Climate Assessment	U.S. Office of Personnel Management, 2019 NMB Climate Assessment – for Reporting NMB's Strategic Plan FY2018-FY2022 ^o	GAO, Standards for Internal Control in the Federal Government ^p
Telework	NMB Policy #2001: Telecommuting	Telework Enhancement Act of 2010 ^q
Travel	NMB Policy #7000: Travel Policy (Aug. 2018) Email correspondence, "New Travel Payment Standard" (April 2019) 2019 National Mediation Board Annual Performance and Accountability Report	Federal travel regulations found at 41 C.F.R. § 300-304
Audit findings and recommendations	Policy #5100 Audit Coordination and Follow-up Fiscal Year 2016, 2017, and 2018 Final Independent Auditors' Reports, and associated management letters	OMB Circular No. A-123 ^r OMB Circular No. A-50 ^s GAO, Standards for Internal Control in the Federal Government ^t
Management of Appropriations	NMB's budget for fiscal years 2018 and 2019 NMB's Congressional Budget Submissions for fiscal years 2017, 2018, 2019, and 2020 Fiscal Year 2016, 2017, and 2018 Final Independent Auditors' Reports, and associated management letters NMB's Strategic Plan FY2018-FY2022 ^u	OMB Circular No. A-11 ^v OMB Circular No. A-123 ^w OMB Circular No. A-50 Revised ^x GAO, Standards for Internal Control in the Federal Government ^y

Source: GAO analysis of NMB documents and interviews with NMB officials. | GAO-20-236

^a84 Fed. Reg. 24.701 (May 29, 2019).

^bGAO, *Standards for Internal Control in the Federal Government*, [GAO14-704G](#) (Washington, D.C.: September 2014).

^c5 C.F.R. Part 263.

^dThe delegation order reorganized various agency components in an effort to improve NMB management and oversight of agency operations.

^eInformation security program and evaluation requirements for The Federal Information Security Management Act of 2002 (FISMA 2002), enacted as Title III, E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2946. The Federal Information Security Modernization Act of 2014 (FISMA 2014), enacted as Pub. L. No. 113-283, 128 Stat. 3073, largely superseded FISMA 2002. As used in this report, FISMA refers both to FISMA 2014 and to those provisions of FISMA 2002 that were either incorporated into FISMA 2014 or were unchanged and continue in full force and effect.

^fThe Privacy Act of 1974, 5 U.S.C. § 552a.

^gE-Government Act of 2002, Pub. L. No. 107-347, § 208, 116 Stat. 2899, 2921.

^hNational Institute of Standards and Technology, *Security and Privacy Controls for Federal Information Systems and Organizations*, SP-80053, Revision 4 (Gaithersburg, MD: April 2013).

ⁱOMB Memo M-02-01, *Guidance for Preparing and Submitting Security Plans of Action and Milestones* (Oct. 17, 2001); OMB Memo M-03-22, *Guidance for Implementing the Privacy Provisions*

**Appendix I: National Mediation Board
Documents Compared with Statutory and
Policy Requirements**

of the E-Government Act of 2002 (Sept. 26, 2003); and OMB Memo M-16-24, *Role and Designation of Senior Agency Officials for Privacy* (Sept. 15, 2016).

^jOMB, *Security Authorization of Information Systems in Cloud Computing Environments* (December 8, 2011).

^kFederal Risk and Authorization Management Program (FedRAMP), *Agency Guide For FedRAMP Authorizations: How to Functionally Reuse an Existing Authorization Version 2.0* (Washington, D.C.: Dec. 7, 2017).

^lThese data track the number of pending, open, and closed arbitration cases at NMB by fiscal year.

^m[GAO14-704G](#).

ⁿGAO, *Managing for Results: Measuring Program Results that Are Under Limited Federal Control*, [GAO/IGD-99-16](#) (Washington, D.C.: Dec 11, 2013).

^oNMB, *Strategic Plan FY2018 – FY2022*, (November 13, 2018).

^p[GAO14-704G](#).

^qTelework Enhancement Act of 2010, Pub. L. No. 111-292, 124 Stat. 3165 (primarily codified at chapter 65, part III of title 5, of the United States Code).

^rOMB, *Management's Responsibility for Enterprise Risk Management and Internal Control*, Circular No A-123 (July 15, 2016).

^sOMB, *Audit Followup*, Circular No. A-50 Revised (September 29, 1982).

^t[GAO14-704G](#).

^uNMB, *Strategic Plan FY2018 – FY2022*, (November 13, 2018).

^vOMB, *Preparation, Submission, and Execution of the Budget*, Circular No. A-11 (June 2019).

^wOMB, *Management's Responsibility for Enterprise Risk Management and Internal Control*, Circular No. A-123 (July 15, 2016).

^xOMB, *Audit Followup*, Circular No. A-50 Revised (September 29, 1982).

^y[GAO14-704G](#).

Appendix II: Status of National Mediation Board Practices in Information Privacy and Security

Table 5: Extent to Which the National Mediation Board (NMB) Is Following Key Practices for Information Privacy and Security

	Practice	Extent NMB is following ^a	Example of NMB's current status
Information Privacy	1. Assign agency official for privacy	Following	NMB appointed a senior agency official for privacy in April 2019 and documented the assignment through a memorandum.
	2. Establish policies and procedures for privacy protections	Partially following	NMB established a privacy policy dated October 2017 that includes procedures for protecting sensitive information, including personally identifiable information. However, the policy reflects outdated roles and responsibilities. For example, the policy reflects the role of chief of staff that no longer exists in the agency. An NMB official stated the agency engaged a technical writer (contractor) to update the policy by the end of fiscal year 2020.
	3. Conduct privacy impact assessments ^b for systems containing personally identifiable information	Partially following	The NMB documented a privacy impact assessment dated July 2018. However, the assessment did not specify whether a system of records notice would be developed as required by the Office of Management and Budget (OMB). ^c An NMB official stated the agency engaged an information system security officer (contractor) to address this practice by the end of fiscal year 2020.
	4. Issue systems of records notice ^d	Minimally following	NMB did not issue a system of records notice for its enterprise network and did not provide any documentation that this notice was not required in the agency's privacy impact assessment. An NMB official stated the agency engaged an information system security officer (contractor) to address this practice by the end of fiscal year 2020.

**Appendix II: Status of National Mediation
Board Practices in Information Privacy and
Security**

Information Security	Practice	Extent NMB is following ^a	Example of NMB's current status
	1. Conduct periodic risk assessments that consider cyber threats and vulnerabilities	Partially following	NMB developed an Information Program Plan dated April 2016 that states the agency annually conduct a risk analysis. NMB had assessments of its enterprise network conducted on May 2016 and November 2017. NMB also completed an information system risk assessment dated October 2017 that identifies and describes threats. However, NMB did not provide any assessment documentation for its network in fiscal year 2019. An NMB official stated the agency engaged a security assessor (contractor) to address this practice by the end of fiscal year 2020.
	2. Develop and implement risk-based policies and procedures to ensure compliance with applicable standards and guidance including system configuration requirements	Partially following	NMB has developed an information security policy by documenting its existing April 2016 Information Program Plan. While the policy includes risk assessment requirements, it does not reflect oversight of NMB third-party providers. An NMB official stated that the agency engaged a technical writer (contractor) to address this practice by the end of fiscal year 2020.
	3. Develop system security plans that cover networks, facilities, and systems or groups of systems, as appropriate	Partially following	NMB's current system security plan for its enterprise network has been in place since March 2016. However, the plan does not include full implementation details on operational controls or a rationale on why controls are not applicable as recommended in National Institute of Standards and Technology guidance. ^e An NMB official stated that the agency engaged an information system security officer (contractor) to address this practice by the end of fiscal year 2020.
	4. Provide security awareness training for agency employees and contractors.	Partially following	NMB has security awareness training guidelines signed April 2016 that specify agency employees and contractors will receive annual security awareness training. An NMB official stated that security awareness training is to be conducted each fiscal year. However, an NMB official stated the agency did not provide security awareness training in fiscal year 2018. NMB provided that training in fiscal year 2019, and an NMB official said the agency engaged an information system security officer (contractor) to address this practice by the end of fiscal year 2020.
	5. Conduct periodic management testing and evaluation that includes testing of all major systems at least annually	Partially following	In May 2016, the NMB's enterprise network was independently tested by the Department of the Treasury's Bureau of Fiscal Service Division of Security Services. In addition, an NMB official documented a security assessment for the network signed November 2017. However, NMB did not provide us with any additional documentation to show the enterprise network was assessed in fiscal year 2019. According to an NMB official, the agency engaged a security assessor (contractor) to address this practice by the end of fiscal year 2020.

**Appendix II: Status of National Mediation
Board Practices in Information Privacy and
Security**

Practice	Extent NMB is following ^a	Example of NMB's current status
6. Establish a remedial action process to address identified information security control weaknesses	Partially following	NMB has documented a remedial action process through its Information Program Plan dated April 2016. In addition, the agency documented a plan of actions for its enterprise network dated January 2018. However, the plan of actions did not fully meet OMB requirements such as planned completion dates and changes to milestones, among other things. ^f An NMB official stated that the agency engaged an information system security officer (contractor) to address this practice by the end of fiscal year 2020.
7. Establish security-incident procedures for detecting, reporting, and responding to incidents	Partially following	NMB's security-incident procedures dated June 2016 include information on handling cyber incidents. However, the procedure did not include required actions specified by the Federal Information Security Modernization Act of 2014, such as notifying the federal information security incident center, law enforcement agencies, and relevant offices of inspector general and general counsel. An NMB official stated the agency engaged a technical writer (contractor) to address this practice by the end of fiscal year 2020.
8. Establish and maintain up-to-date continuity of operations plans and procedures for information systems	Partially following	NMB documented a continuity of operations plan policy dated March 2016. However, the agency has not documented a contingency plan for its enterprise network. An NMB official stated the agency engaged an information system security officer (contractor) to address this practice by the end of fiscal year 2020.

Source: GAO analysis of relevant government-wide documents and security guidance, NMB documents, interviews with NMB officials, and past GAO reports. | GAO-20-236

^aWe assessed whether NMB is following key practices—taking appropriate actions and has a formal plan, policy, or other document; partially following—taking some actions but does not have a formal plan or policy and/or some additional steps must be taken to consider this practice implemented; or minimally following—taking little or no action to address this particular practice.

^bA privacy impact assessment is an analysis of how personal information is collected, stored, shared, and managed in a federal system.

^cOffice of Management and Budget, *OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002*, OMB-M-03-22 (Washington, D.C.: September 26, 2003).

^dA system of records is a collection of information about individuals under control of an agency from which information is retrieved by the name of an individual or other identifier. System of records notices are posted to agency websites to identify, among other things, the purpose of and individuals covered by information in a system of records, the category of records that are maintained about the individuals, and how the information is shared and routinely used by the agency.

^eNational Institute of Standards and Technology, *Security and Privacy Controls for Federal Information Systems and Organizations*, SP-800-53, Revision 4 (Gaithersburg, MD: April 2013).

^fOffice of Management and Budget, *Guidance for Preparing and Submitting Security Plans of Action and Milestones*, M-02-01 (Washington, D.C.: Oct.17, 2001).

Appendix III: Comments from the National Mediation Board



NATIONAL MEDIATION BOARD

WASHINGTON, DC 20572

COMMENTS FROM THE NATIONAL MEDIATION BOARD

January 28, 2020

This document is provided as a formal response by the National Mediation Board (NMB) to the Government Accountability Office (GAO) draft report GAO-20-236, *National Mediation Board: Additional Actions Needed to Fully Implement Prior GAO Recommendations and Improve Agency Management and Oversight*, dated February 2020.

The Board has reviewed the observations and recommendations made by GAO. NMB appreciates the opportunity to provide comments responding to the report and the efforts of GAO to conduct its Congressionally-mandated review.

The Board continues to make progress with respect to prior GAO recommendations which are highlighted in the GAO report. Some of these GAO-cited NMB accomplishments include:

- NMB developed and is monitoring its new Policy regarding Ethical Standards for Outside Employment Activities (2018 recommendation). This policy was fully implemented in May 2019 (pages 9, 10).
- Rail Arbitration Case Backlog (2018): The Board has been responsive to concerns raised regarding the rail arbitration case backlog. Since the last GAO report, the backlog has decreased by 57 percent, the first decrease in the caseload since 2012. The Board has also completed steps to correct for the inability to track and classify the type of grievances filed for arbitration with the National Railroad Adjustment Board (NRAB). Now all rail grievances filed with a Public Law Board (PLB), a Special Board of Adjustment (SBA) and the NRAB include a designated subject code that allows the NMB to understand the subject of all NMB rail claims. NMB developed strategies to address the backlog such as record reviews by labor and management to remove cases that are not progressing to arbitrations or have been closed. NMB has successfully worked with the parties to resolve disputes using NMB Grievance Mediation and selecting

1

one "Lead Case" to arbitrate with the understanding that similar cases will be bound by the result of that arbitration. The NMB Ambassador Program, an NMB outreach program, which aligns NMB Mediators to promote and coordinate grievance mediation with rail carriers and rail organizations, has proven successful. Now that these programs have proven results, NMB will begin to track progress in this area and document results (page 10).

- Organizational Climate Assessment (2018): To better address employee concerns NMB developed and administered an organizational climate assessment. NMB has taken various actions to address employee concerns with respect to travel policy administration. NMB instituted an employee education forum to familiarize everyone with all aspects of the Agency's mission. The Board is also exploring additional training opportunities for management officials. The Board intends to continue to address the results of the survey through further development of Policies and Procedures that address employee concerns (page 10).
- Travel Policy (2018): NMB has taken steps to improve its internal controls related to travel and revised its Travel Policy in August 2018. Beginning March 1, 2020, NMB will be changing its Travel Management Center (TMC), and adding additional elements to its travel system, Concur. Benefits of this change include allowing employees to self-book transportation online, as well as more efficient and effective oversight of travel authorizations. In conjunction with these changes, the NMB will again update the Travel Policy and review its compliance with Federal Travel Regulations (page 10).
- Telework Policy (2018): NMB has taken steps to track its telework training and telework agreements and is now taking steps to update its policy to reflect the organizational structure and re-examine its compliance with applicable regulations (page 10).
- Information Privacy (2013): NMB has taken steps to implement information privacy practices including appointing a privacy officer.
- Information Security (2013): The hiring of a Chief Information Officer has led to further implementation of key information security practices in FY 2019. NMB is hiring a blend of FTEs and contractors to take additional steps, such as providing risk assessment documentation (page 10).
- In response to Appendix II, Table 5: Extent to Which the National Mediation Board (NMB) Is Following Key Practices for Information Privacy and Security (pages 34-36), the NMB has named a privacy officer and hired contractors to address the following areas for completion by the end of FY 2020.
 - **Information Privacy:**

Information System Security Officer (ISSO):

Practice 3 – Conduct privacy impact assessments for systems containing personally identifiable information.

Practice 4 – Issue systems of records notice.

Technical Writer:

Practice 2 – Establish policies and procedures for privacy protections.

o **Information Security:**

Information System Security Officer (ISSO):

Practice 3 – Develop system security plans that cover networks, facilities, and systems or groups of systems, as appropriate.

Practice 4 – Provide security awareness training for agency employees and contractors.

Practice 6 – Establish a remedial action process to address identified information security control weaknesses.

Practice 8 – Establish and maintain up-to-date continuity of operations plans and procedures for information systems.

Technical Writer:

Practice 2 – Develop and implement risk based policies and procedures to ensure compliance with applicable standards and guidance including system configuration requirements.

Practice 7 – Establish security-indecent procedures for detecting, reporting, and responding to incidents.

Security Assessor:

Practice 1 – Conduct periodic risk assessments that consider cyber threats and vulnerabilities.

Practice 5 – Conduct periodic management testing and evaluation that includes testing of all major systems at least annually.

However, the Board agrees with GAO and recognizes that additional actions and controls are needed to address certain management challenges. The Board provides the following comments, which respond to the observations and recommendations made by GAO and describe the actions and new controls made by the Board.

Recommendation 1 – The Chairman of the NMB should document NMB’s authorizations for its use of cloud services approved through FedRAMP and submit the authorizations to the FedRAMP Program Management Office.

The NMB Chief Information Officer will provide the Chairman of the NMB a document listing NMB’s authorizations for its use of cloud services approved through FedRAMP and submit the authorizations to the FedRAMP Program Management Office. Due: End of FY 2020.

Recommendation 2 – The Chairman of the NMB should update NMB’s security policies and procedures to include FedRAMP’s authorization requirements.

The NMB Chief Information Officer will provide the Chairman of the NMB an update of NMB’s security policies and procedures to include FedRAMP’s authorization requirements. Due: End of FY 2020.

Recommendation 3 – The Chairman of the NMB should develop a written plan to document NMB’s process for reviewing and monitoring the agency’s annual appropriation to ensure that funds are used effectively.

The Chairman of the NMB will develop a written plan to document NMB’s process for reviewing and monitoring the agency’s annual appropriation to ensure that funds are used effectively. The NMB Board will meet with the NMB Chief Financial Officer monthly, at a minimum, to review the status of NMB’s appropriated funds, including funds control and projected expenditure reports.

Recommendation 4 – The Chairman of the NMB should establish a process for the Board to effectively monitor and evaluate NMB’s adherence to audit protocols and implementation of actions to address audit recommendations.

The Chairman of the NMB will establish a process for the Board to effectively monitor and evaluate NMB’s adherence to audit protocols and implementation of actions to address audit recommendations. The NMB Board will review Corrective Action Plans based on any audit recommendations and/or findings to ensure proper and timely implementation of such actions.

**Appendix III: Comments from the National
Mediation Board**

Respectfully submitted by:



Linda Puchala, Chairman
National Mediation Board



Kyle Fortson, Member
National Mediation Board



Gerald W. Fauth, III, Member
National Mediation Board

Text of Appendix III: Comments from the National Mediation Board

Page 1

COMMENTS FROM THE NATIONAL MEDIATION BOARD

January 28, 2020

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The Board has reviewed the observations and recommendations made by GAO. NMB appreciates the opportunity to provide comments responding to the report and the efforts of GAO to conduct its Congressionally-mandated review.

The Board continues to make progress with respect to prior GAO recommendations which are highlighted in the GAO report. Some of these GAO-cited NMB accomplishments include:

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- NMB developed strategies to address the backlog such as record reviews by labor and management to remove cases that are not progressing to arbitrations or have been closed. NMB has successfully worked with the parties to resolve disputes using NMB Grievance Mediation and selecting

Page 2

one “Lead Case” to arbitrate with the understanding that similar cases will be bound by the result of that arbitration. The NMB Ambassador Program, an NMB outreach program, which aligns NMB Mediators to promote and coordinate grievance mediation with rail carriers and rail organizations, has proven successful. Now that these programs have proven results, NMB will begin to track progress in this area and document results (page 10).

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- Information Privacy:

Page 3

Information System Security Officer (ISSO):

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Practice 4 – Issue systems of records notice.

Technical Writer:

Practice 2 – Establish policies and procedures for privacy protections.

- Information Security:

Information System Security Officer (ISSO):

Practice 3 – Develop system security plans that cover networks, facilities, and systems or groups of systems, as appropriate.

Practice 4 – Provide security awareness training for agency employees and contractors.

Practice 6 – Establish a remedial action process to address identified information security control weaknesses.

Practice 8 – Establish and maintain up-to-date continuity of operations plans and procedures for information systems.

Technical Writer:

Practice 2 – Develop and implement risk based policies and procedures to ensure compliance with applicable standards and guidance including system configuration requirements.

Practice 7 – Establish security-indecent procedures for detecting, reporting, and responding to incidents.

Security Assessor:

Practice 1 – Conduct periodic risk assessments that consider cyber threats and vulnerabilities.

Page 4

Practice 5 – Conduct periodic management testing and evaluation that includes testing of all major systems at least annually.

However, the Board agrees with GAO and recognizes that additional actions and controls are needed to address certain management challenges. The Board provides the following comments, which respond to the observations and recommendations made by GAO and describe the actions and new controls made by the Board.

Recommendation 1 – The Chairman of the NMB should document NMB’s authorizations for its use of cloud services approved through FedRAMP and submit the authorizations to the FedRAMP Program Management Office.

The NMB Chief Information Officer will provide the Chairman of the NMB a document listing NMB’s authorizations for its use of cloud services approved through FedRAMP and submit the authorizations to the FedRAMP Program Management Office. Due: End of FY 2020.

Recommendation 2 – The Chairman of the NMB should update NMB’s security policies and procedures to include FedRAMP’s authorization requirements.

The NMB Chief Information Officer will provide the Chairman of the NMB an update of NMB’s security policies and procedures to include FedRAMP’s authorization requirements. Due: End of FY 2020.

Recommendation 3 – The Chairman of the NMB should develop a written plan to document NMB’s process for reviewing and monitoring the agency’s annual appropriation to ensure that funds are used effectively.

The Chairman of the NMB will develop a written plan to document NMB’s process for reviewing and monitoring the agency’s annual appropriation to ensure that funds are used effectively. The NMB Board will meet with the NMB Chief Financial Officer monthly, at a minimum, to review the status of NMB’s appropriated funds, including funds control and projected expenditure reports.

Recommendation 4 – The Chairman of the NMB should establish a process for the Board to effectively monitor and evaluate NMB’s adherence to audit protocols and implementation of actions to address audit recommendations.

The Chairman of the NMB will establish a process for the Board to effectively monitor and evaluate NMB's adherence to audit protocols and implementation of actions to address audit recommendations. The NMB Board will review Corrective Action Plans based on any audit recommendations and/or findings to ensure proper and timely implementation of such actions.

Page 5

Respectfully submitted by:

Linda Puchala, Chairman National Mediation Board

Kyle Fortson, Member National Mediation Board

Gerald W. Fauth, III, Member National Mediation Board

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Tranchau (Kris) T. Nguyen, 202-512-7215 or Nguyentt@gao.gov

Staff Acknowledgments

In addition to the contact named above, Mary Crenshaw (Assistant Director), Andrew Nelson (Analyst-In-Charge), Cindy Brown Barnes, Larry Crosland, Mikey Erb, Chelsa Gurkin, John Lack, and Dana Pon made significant contributions to this report. Also contributing to this report were Shirley Abel, Amy Anderson, Bill Anderson, J. Howard Arp, Gary Bianchi, Rachael Chamberlin, Vijay D'Souza, Robert Graves, Carol Henn, Janice Latimer, Barbara Lewis, Benjamin Licht, Jessica Orr, Monica Perez-Nelson, James Rebbe, Constance Satchell, Monica Savoy, Almeta Spencer, Sabrina Streagle, Barbara Steel, Amy Sweet, Curtia Taylor, Candice Wright, and Paul Wright.

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