



April 2022

# RAIL AND AIR LABOR RELATIONS

## National Mediation Board Made Progress on GAO Recommendations but Needs to Address Management Issues

Accessible Version

# GAO Highlights

Highlights of [GAO-22-105266](#), a report to congressional committees

## Why GAO Did This Study

NMB, created by a 1934 amendment to the Railway Labor Act, plays a critical role in helping airline and railway carriers resolve labor disputes to avoid work stoppages. The FAA Modernization and Reform Act of 2012 included a provision for GAO to evaluate NMB programs and activities every 2 years. GAO previously issued four reports between 2013 and 2020 that included a cumulative total of 17 recommendations to NMB. As of its 2020 report, NMB had implemented seven of those recommendations.

This fifth report examines (1) the extent to which NMB has taken actions to fully implement GAO's remaining 10 open recommendations; and (2) NMB's process to identify, track, and address management and oversight challenges. GAO reviewed relevant federal laws and regulations; examined NMB documents, plans, policies, and practices; and interviewed officials from NMB, NLRB IG, and an NMB advisory group.

## What GAO Recommends

GAO recommends that NMB implement a systematic process to track and address issues reported to it by the NLRB IG. NMB agreed with this recommendation.

View [GAO-22-105266](#). For more information, contact Dawn Locke at (202) 512-7215 or [locked@gao.gov](mailto:locked@gao.gov).

April 2022

## RAIL AND AIR LABOR RELATIONS

### National Mediation Board Made Progress on GAO Recommendations but Needs to Address Management Issues

## What GAO Found

The National Mediation Board (NMB), which facilitates labor relations for railroads and airlines, has implemented seven of GAO's 10 remaining recommendations related to internal policies and processes (see figure). While NMB has taken some actions to address the remaining three recommendations on information privacy, security, and cloud services, it has not yet fully implemented them. Specifically, NMB has not:

- fully updated its policies and procedures for information privacy protections;
- conducted security testing and evaluation of all its major systems; and
- used only federally approved cloud services, as required.

By not fully implementing these recommendations, NMB is increasingly vulnerable to information security risks to its data and systems.

#### Status of GAO Recommendations to the National Mediation Board

Recommendation area	
Organizational Climate Assessment (2018)	●
Travel Policy (2018)	●
Telework Policy (2018)	●
Rail Arbitration Case Backlog (2018)	●
Annual Appropriations Monitoring (2020)	●
Audit Protocols Process (2020)	●
Information Technology Policies (2020)	●
Information Privacy (2013)	⊘
Information Security (2013)	⊘
Cloud Services Authorization (2020)	⊘

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

Source: GAO analysis of National Mediation Board documents and information. | GAO-22-105266

#### Accessible Information for Status of GAO Recommendations to the National Mediation Board

#### Status of GAO Recommendations to the National Mediation Board

#### Recommendation Area:

- Implemented: Organizational Climate Assessment (2018), Travel Policy (2018), Telework Policy (2018), Rail Arbitration Case Backlog (2018), Annual Appropriations Monitoring (2020), Audit Protocols Process (2020), Information Technology Policies (2020)
- Not fully implemented (ranges from limited progress to substantial progress): Information Privacy (2013), Information Security (2013), Cloud Services Authorization (2020)

Source: GAO analysis of National Mediation Board documents and information. | GAO-22-105266

NMB has no authorized Inspector General (IG) and therefore relies on third-party entities, including GAO, to identify issues and challenges. In addition, the National Labor Relations Board (NLRB) IG manages a hotline for NMB

employees to report issues. Under its memorandum of understanding with NMB, the NLRB IG is to inform NMB of issues raised through the hotline; the IG may also communicate other NMB management concerns that come to its attention.

However, NMB lacks a systematic process to track and address all issues that the NLRB IG reports to it. NMB officials said there is currently no such process in place, in part, because it is a small agency with competing interests and priorities. Nevertheless, without a systematic process to track and address issues, NMB cannot ensure corrective actions are implemented in a timely manner.

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# Contents

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GAO Highlights		2
	<b>Why GAO Did This Study</b>	2
	<b>What GAO Recommends</b>	2
	<b>What GAO Found</b>	2
Letter		1
	Background	4
	NMB Has Implemented Seven GAO Recommendations, but Additional Actions Are Needed to Address the Remaining Three	8
	NMB Relies on Third Parties to Identify Challenges and Lacks a Systematic Process to Track and Address Issues	13
	Conclusions	16
	Recommendations for Executive Action	17
	Agency Comments and Our Evaluation	17
Appendix I: Status of National Mediation Board Practices in Information Privacy and Security		18
Appendix II: GAO Contact and Staff Acknowledgments		22
	GAO Contact	22
	Staff Acknowledgments	22
Tables		
	Table 1: Status of GAO's Recommendations to the National Mediation Board (NMB)	9
	Table 2: Extent to Which the National Mediation Board (NMB) Is Following Key Practices for Information Privacy and Security	18
Figures		
	Accessible Information for Status of GAO Recommendations to the National Mediation Board	2
	Figure 1: Organization of the National Mediation Board, as of January 2022	5
	Accessible Information for Figure 1: Organization of the National Mediation Board, as of January 2022	6

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## Abbreviations

FedRAMP    Federal Risk and Authorization Management Program

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FISMA	Federal Information Security Modernization Act
IG	Inspector General
NLRB	National Labor Relations Board
NMB	National Mediation Board
OIG	Office of Inspector General
OLA	Office of Legal Affairs
OMB	Office of Management and Budget
OPM	Office of Personnel and Management

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April 25, 2022

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

The Honorable Patty Murray  
Chair  
The Honorable Richard Burr  
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

For more than 80 years, the National Mediation Board (NMB) has played a critical role in helping airline and railway carriers resolve labor disputes, thus avoiding work stoppages that could have severe economic consequences. 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 without interruption, according to NMB's 2018 Performance and Accountability Report. NMB, created by a 1934 amendment to the Railway Labor Act, oversees labor union elections and provides mediation, arbitration, and other services to resolve railroad and airline labor disputes, including disputes that involve working conditions,

rates of pay, and union representation.<sup>1</sup> Currently, NMB delivers services to management and labor unions for approximately 150 commercial airlines and over 500 railroads. NMB has 51 full-time equivalent staff positions and had a fiscal year 2021 budget of \$14.3 million.

The FAA Modernization and Reform Act of 2012 further amended the Railway Labor Act and includes a provision for us to evaluate and audit the programs, operations, and activities of NMB every 2 years.<sup>2</sup> We have previously issued four prior reports that included a cumulative total of 17 recommendations to NMB to improve its management and oversight.<sup>3</sup>

This fifth review of NMB examines

1. the extent to which NMB has taken actions to fully implement open recommendations from GAO's prior reports, and
2. what is known about NMB's process to identify, track, and address key management and oversight challenges as they arise.

To address both objectives, we reviewed relevant federal laws, regulations, and guidance, along with our previous work. We also assessed NMB's plans and policies related to key areas such as information security, privacy, travel, and telework, using previously identified criteria such as relevant provisions of the Federal Information

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<sup>1</sup>The Railway Labor Act was enacted in 1926 to provide a framework for ensuring harmonious railroad labor relations, and was amended in 1936 to also cover the airline industry. The act 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. In addition, the act requires 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.

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

<sup>3</sup>GAO, *National Mediation Board: Additional Actions Needed to Fully Implement Prior GAO Recommendations and Improve Agency Management and Oversight*, [GAO-20-236](#) (Washington, D.C.: Feb. 14, 2020); *National Mediation Board: Progress Made on GAO Recommendations, but Actions Needed to Address Management Challenges*, [GAO-18-301](#) (Washington, D.C.: Mar. 22, 2018); *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 *National Mediation Board: Strengthening Planning and Controls Could Better Facilitate Rail and Air Labor Relations*, [GAO-14-5](#) (Washington, D.C.: Dec. 3, 2013).

Security Modernization Act of 2014 (FISMA);<sup>4</sup> the Office of Management and Budget's (OMB) 2011 memorandum on Security Authorization of Information Systems in Cloud Computing Environments;<sup>5</sup> OMB Circular A-11 on Preparation, Submission, and Execution of the Budget; OMB Circular A-123 on Management's Responsibility for Enterprise Risk Management and Internal Control;<sup>6</sup> and Agency Guide for Federal Risk and Authorization Management Program (FedRAMP) Authorizations.<sup>7</sup> In addition, we used the Standards for Internal Control in the Federal Government to assess NMB's processes and reviewed key agency documents, including NMB's most recent 5-year strategic plan, its annual Performance and Accountability Report, and congressional budget justification documents.<sup>8</sup>

To examine the extent of NMB's actions to fully implement our open recommendations, we reviewed relevant documentation and interviewed NMB officials and Board members. 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 address the recommendation. Conversely, we use the term "not fully implemented" to describe recommendations where additional actions are needed to address the recommendation.

To examine NMB's process to identify, track, and address key management and oversight challenges that arise, we reviewed relevant

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<sup>4</sup>The Federal Information Security Management Act of 2002 (FISMA 2002) established information security program and evaluation requirements for federal agencies. Pub. L. No. 107-347, 116 Stat. 2899, 2946. FISMA 2002 was largely superseded by the Federal Information Security Modernization Act of 2014 (FISMA 2014). Pub. L. No. 113-282, 128 Stat. 3073. In this report, we use "FISMA" to refer to FISMA 2014 and to those provisions of FISMA 2002 that were either incorporated into FISMA 2014 or that were unchanged and continue in full force and effect.

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

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

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

<sup>8</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).



documentation and interviewed NMB officials and Board members. We also interviewed the National Labor Relations Board (NLRB) Inspector General (IG) to obtain information about the independent hotline that the IG operates under a memorandum of understanding with NMB to allow its employees to report issues related to fraud, waste, and abuse.<sup>9</sup> In addition, we reviewed the NLRB IG's April 2021 management issues memo that identified management challenges reported by NMB employees. Further, we interviewed an NMB advisory group that represents both the airline and railway industries and airline and railway unions about NMB processes to identify and address management and oversight challenges.

We conducted this performance audit from May 2021 to April 2022 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.

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## Background

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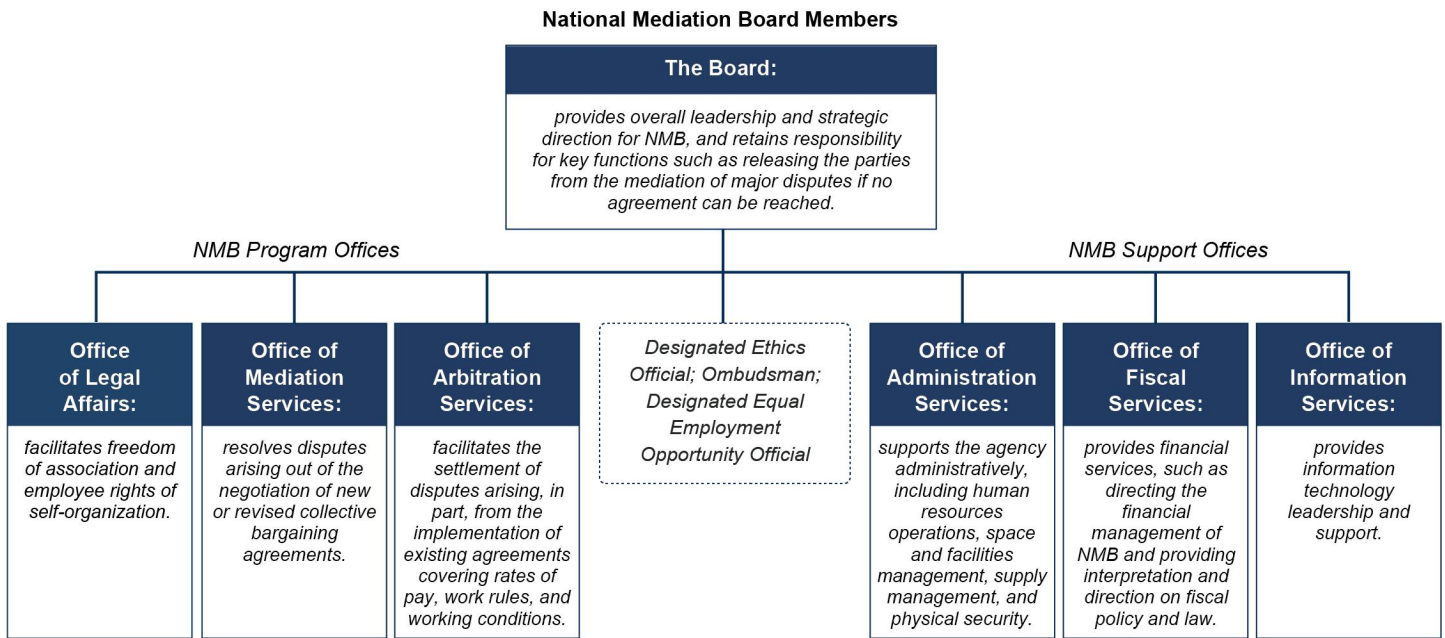
### NMB's Organization and Mission

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. In May 2018, NMB reorganized various agency components to improve its management and oversight of agency operations. This resulted in the creation of three program offices and three support offices. All of the offices, along with NMB's Designated Agency Ethics Official, report directly to the Board (see fig. 1).

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<sup>9</sup>Federal law does not establish an IG for NMB, nor is the agency subject to oversight by an IG of another agency.

**Figure 1: Organization of the National Mediation Board, as of January 2022**



Source: National Mediation Board (NMB). | GAO-22-105266

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**Accessible Information for Figure 1: Organization of the National Mediation Board, as of January 2022**

National Mediation Board 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; Ombudsman; Designated Equal Employment Opportunity Official
  - NMB Program Offices
    - Office of Legal Affairs: facilitates freedom of association and employee rights of self-organization.
    - Office of Mediation Services: resolves disputes arising out of the negotiation of new or revised collective bargaining agreements.
    - 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 Support Offices
    - Office of Administration Services: supports the agency administratively, including human resources operations, space and facilities management, supply management, and physical security.
    - Office of Fiscal Services: provides financial services, such as directing the financial management of NMB and providing interpretation and direction on fiscal policy and law.
    - Office of Information Services: provides information technology leadership and support.

NMB's mission is to promote labor relations in the airline and railroad industries in order to avoid interruption to commerce or to the operation of any carrier, facilitate the orderly determination of representation in the airline and railroad industries, and facilitate the settlement of disputes related to pay, work rules, and working conditions and the agreements covering those issues. To fulfill its mission, NMB operates three program areas:

- **Representation.** Rail and 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 class<sup>10</sup> through the agency's Office of Legal Affairs (OLA), and has sole jurisdiction to decide these disputes.<sup>11</sup>

- **Mediation and Alternative Dispute Resolution.** The Railway Labor Act provides for mediation to help resolve disputes between management and labor during collective bargaining negotiations.<sup>12</sup> 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 pay rates, either of the parties can apply for NMB's mediation services to resolve their differences. NMB also offers grievance mediation to parties as a voluntary and alternative way to resolve disputes filed for grievance arbitration.
- **Arbitration.** The Railway Labor Act also offers grievance arbitration to help resolve disagreements between carriers and unions over how to interpret and apply provisions of existing collective bargaining agreements.<sup>13</sup> 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.

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## 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. Among other things:

- OMB is responsible for providing oversight of agencies' management.
- OPM is the central personnel management agency of the federal government. Among other responsibilities, it is charged with ensuring agencies comply with conducting audits of their human capital programs.

As previously noted, federal law does not establish an IG for NMB, nor is the agency subject to oversight by an IG of another agency. NMB has

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<sup>10</sup>A craft or class consists of those employees who perform the same duties or functions at a given carrier, such as locomotive engineers or pilots.

<sup>11</sup>45 U.S.C. § 152, Ninth.

<sup>12</sup>45 U.S.C. § 155, First.

<sup>13</sup>45 U.S.C. § 153, First (i).

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taken action, however, to provide some independent oversight of its management and operations. In 2018, NMB signed a memorandum of understanding with the NLRB IG to (1) operate an independent hotline for its employees to submit information regarding fraud, waste, and abuse involving NMB's programs and operations, and (2) inform the appropriate law enforcement agency or the NMB Chair or Board, as appropriate.

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## GAO Previously Made Numerous Recommendations to NMB

Over the course of our 2013, 2016, 2018 and 2020 NMB reviews, we collectively made 17 recommendations in key oversight and management areas.<sup>14</sup> As of our 2020 report, NMB had previously implemented seven of those recommendations, including recommendations to develop a strategic planning process, performance goals and measures, and a workforce plan; develop a mechanism to address audit findings and recommendations by independent auditors; and develop policies for procurement, and for employee requests for outside employment and activities. NMB had not fully implemented the remaining ten recommendations.

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## NMB Has Implemented Seven GAO Recommendations, but Additional Actions Are Needed to Address the Remaining Three

NMB has implemented seven of the 10 recommendations that remained from our 2013, 2018, and 2020 reports related to internal policies and processes, including the agency's organizational climate assessment to address employee concerns, travel and telework policies, appropriations monitoring, and audit protocols. However, NMB has not taken action to fully implement the remaining three recommendations related to information privacy, security, and cloud services. (See table 1 for more detail about NMB's actions.) Without additional actions to implement the three remaining recommendations, NMB is increasingly vulnerable to information security risks to its data and systems.

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<sup>14</sup>See [GAO-20-236](#), [GAO-18-301](#), [GAO-16-240](#), and [GAO-14-5](#) for more information.

**Table 1: Status of GAO’s Recommendations to the National Mediation Board (NMB)**

Category	GAO recommendation (year) <sup>a</sup>	Status of recommendation, as of January 2022 <sup>b</sup>	NMB actions taken to implement recommendation and further actions needed, as applicable
<b>Implemented</b>	Organizational Climate Assessment (2018) – Complete and take actions on the organizational climate assessment and survey results as a means to address employee concerns.	Implemented	To address this recommendation, NMB administered an organizational climate assessment in 2019 and took actions to address key results of that assessment. For example, NMB has implemented regular calls between the directors of its key offices and the Board. Also, NMB has implemented remote staff meetings in response to COVID-19 to improve communication across departments. In addition, individual offices hold regular virtual staff meetings.
<b>Implemented</b>	Travel Policy (2018) – Revise NMB’s travel policy and develop appropriate internal controls to ensure compliance with federal requirements for travel.	Implemented	To address this recommendation, NMB revised its travel policy to be consistent with the Federal Travel Regulations issued by the U.S. General Services Administration. In addition, NMB improved its internal controls related to travel to ensure compliance with the new travel policy. For example, NMB employees were provided training, which included reviewing specific NMB travel policies in the system.
<b>Implemented</b>	Telework Policy (2018) – Revise NMB’s telework policy and develop appropriate internal controls to ensure compliance with federal requirements for telework.	Implemented	To address this recommendation, NMB revised its telework policy to be consistent with the requirements of the Telework Enhancement Act of 2010. In addition, NMB improved its internal controls related to telework to ensure compliance with the agency’s new telework policy. For example, NMB verifies that employees have a telework agreement in place prior to being approved to telework.

Letter

Category	GAO recommendation (year) <sup>a</sup>	Status of recommendation, as of January 2022 <sup>b</sup>	NMB actions taken to implement recommendation and further actions needed, as applicable
Implemented	Rail Arbitration Case Backlog (2018) – Develop and execute a plan to address the rail arbitration case backlog.	Implemented	To address this recommendation, NMB specified its plan to address the rail arbitration backlog in its 2020 Annual Performance and Accountability Report and has taken actions to implement it. For example, NMB has reached out to parties to encourage them to voluntarily move cases from arbitration to grievance mediation to help decrease the arbitration backlog. In addition, the Board reviews cases 2 years and older that have not progressed to arbitration.
Implemented	Annual Appropriations Monitoring (2020) – 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.	Implemented	To address this recommendation, NMB created a plan to document how it reviews and monitors the agency’s annual appropriation. Specifically, the plan identifies various reports, such as the agency’s fiscal year spending plan, that NMB will monitor regularly to ensure funds are used effectively.
Implemented	Audit Protocols Process (2020) – 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.	Implemented	To address this recommendation, NMB developed a process to monitor and evaluate how it adheres to audit protocols and implements actions to address audit recommendations by GAO and other auditors. Specifically, as part of this process, NMB now develops separate corrective action plans to identify and track the status of each recommendation.
Implemented	Information Technology Policies (2020) – Update NMB’s security policies and procedures to include the Federal Risk and Authorization Management Program’s (FedRAMP) authorization requirements.	Implemented	To address this recommendation, NMB approved a new information technology security policy that includes FedRAMP’s authorization requirements.

Category	GAO recommendation (year) <sup>a</sup>	Status of recommendation, as of January 2022 <sup>b</sup>	NMB actions taken to implement recommendation and further actions needed, as applicable
<b>Not fully implemented</b>	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 steps to implement information privacy practices, such as conducting privacy impact assessments. Specifically, we found that NMB was following three of four key information privacy practices. <sup>c</sup> However, NMB has not fully updated its policies and procedures for information privacy protections. We previously reported that the agency's privacy policy reflects outdated roles and responsibilities. For example, the policy includes the role of the chief of staff position, which no longer exists in the agency. According to NMB, the Board is reviewing this policy; however, officials did not provide a specific time frame for completing this review. See appendix I for more information on the information privacy practices NMB has implemented.
<b>Not fully implemented</b>	Information Security (2013) – Develop and fully implement key components of an information security program in accordance with FISMA. <sup>d</sup>	Not fully implemented	NMB has taken steps to implement its security program, such as developing and documenting an information technology security policy. We found that NMB was following five of eight key information security practices. In accordance with FISMA's requirements, NMB has updated the system security plan for the enterprise network, provided security awareness training, and improved its remedial action process. However, it has not conducted testing and evaluation of all its major information systems or adequately assessed risks to its information systems, as required by FISMA. The NMB Chief Information Officer stated that the agency will complete the assessments during fiscal year 2022.



Letter

Category	GAO recommendation (year) <sup>a</sup>	Status of recommendation, as of January 2022 <sup>b</sup>	NMB actions taken to implement recommendation and further actions needed, as applicable
<b>Not fully implemented</b>	Cloud Services Authorization (2020) – Document NMB’s authorizations for its use of cloud services approved through FedRAMP and submit the authorizations to the FedRAMP Program Management Office.	Not fully implemented	NMB approved a new information technology security policy in 2021, which requires the agency to document its authorizations for its use of cloud services approved through FedRAMP. NMB has documented the authorizations for its FedRAMP-approved cloud services but operates two cloud services that are not approved through FedRAMP. The NMB Chief Information Officer stated that the agency is working to identify FedRAMP-approved replacements for these services but did not provide a timeframe.

Source: GAO analysis of National Mediation Board data and information. | GAO-22-105266

<sup>a</sup>Over the course of our 2013, 2016, 2018, and 2020 NMB reviews, we issued a total of 17 recommendations. NMB previously implemented seven of those recommendations, including recommendations to develop a strategic planning process, performance goals and measures, and a workforce plan; develop a mechanism to address audit findings and recommendations by independent auditors; and develop policies for procurement and for approving and monitoring employee requests for outside employment and activities. We focused our review on the ten recommendations that were open at the time we issued our 2020 report. See [GAO-20-236](#), [GAO-18-301](#), [GAO-16-240](#), and [GAO-14-5](#) for more information.

<sup>b</sup>We use the term “fully implemented” to describe those recommendations where NMB has taken all of the required actions to address the recommendation. The status of “not fully implemented” describes recommendations for which NMB has taken some action to address, but more action is required to address them.

<sup>c</sup>We assessed whether NMB is following, partially following, or minimally following key federal practices: (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 February 2020, see [GAO-20-236](#).

<sup>d</sup>Information 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. The substance of our recommendations has not changed, given the continuation of the relevant FISMA requirements.

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## NMB Relies on Third Parties to Identify Challenges and Lacks a Systematic Process to Track and Address Issues

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### NMB Relies on Third-Party Entities, the NLRB IG, and Internal Processes to Identify Potential Management and Oversight Challenges

NMB relies on third-party entities as one source to identify potential management and oversight challenges at the agency. Third-party reviews differ in scope and frequency, and include:

- **GAO.** The FAA Modernization and Reform Act of 2012 amended the Railway Labor Act to include a provision for us to evaluate and audit NMB's programs, operations, and activities every 2 years. As previously noted, we have conducted four prior reviews of NMB since 2013.
- **OPM.** OPM administers an annual Federal Employee Viewpoint Survey, to federal employees across the government, including NMB employees, to collect information about their agencies' leadership, collaboration, and other issues. NMB officials said OPM also periodically audits particular NMB services and determines the audits' scope and frequency. For example, in fiscal year 2021, OPM audited NMB's hiring processes.
- **OMB.** OMB conducts oversight of agency performance, procurement, financial management, and information technology. For example, NMB officials said OMB reviews NMB's annual Performance and Accountability Reports and budget submissions.
- **Independent financial auditors.** NMB contracts with independent financial auditors to conduct annual financial statement audits. These audits assess the overall presentation of NMB's financial statements. In addition, they evaluate whether NMB's accounting policies are

appropriate and whether its significant accounting estimates are reasonable.<sup>15</sup>

In addition to these third-party entities and as previously noted, NMB has a memorandum of understanding with the NLRB IG under which the IG manages an independent hotline for NMB employees to report issues related to fraud, waste, and abuse at their agency.<sup>16</sup> NMB officials said airline and railway industry employees outside of NMB also use the NLRB IG hotline to report issues in their workplaces. NMB officials said, in general, under the memorandum of understanding, the NLRB IG communicates information regarding the allegations received via the hotline to NMB's Office of Legal Affairs (OLA), but brings issues that directly involve OLA to the NMB Board. The memorandum of understanding states that if the NLRB IG receives concerns unrelated to fraud, waste, or abuse, such as concerns related to agency management, it will refer the individual providing the information to the appropriate government office. Since the hotline's inception in January 2018, the NLRB IG forwarded at least 17 calls received through the hotline to OLA to take appropriate action. NMB officials said the majority of these calls were from airline and railroad employees and were about union representation matters or individual employment issues.<sup>17</sup> The few remaining calls were related to NMB concerns about potential fraud, waste, and abuse, such as issues related to the agency's travel cards and time and attendance.

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<sup>15</sup>In accordance with accounting standards, NMB's management is responsible for making judgments or assumptions about accounting estimates, and for monitoring the reasonableness of these estimates on an ongoing basis.

<sup>16</sup>The agreement between the agencies does not grant the NLRB IG authority to initiate or conduct investigations, audits, and other activities beyond operating the hotline when concerns are identified. NMB currently does not have an authorized IG, nor is it subject to oversight by an IG of another agency. IG offices play a key role in federal agency oversight by enhancing government accountability and protecting the government's resources. In 2013, we suggested that Congress consider authorizing an appropriate federal agency's Office of Inspector General (OIG) to provide independent audit and investigative oversight of NMB. Congress considered this matter by circulating draft legislation and holding a hearing in April 2014, but no additional actions were taken at the time.

<sup>17</sup>According to NMB officials, an OLA attorney provides airline and railroad employees who call the hotline with information about their employment rights under the Railway Labor Act. Officials said that they treat these calls the same way as other public inquiry calls, and noted that some issues reported are outside of NMB's statutory authority to address.

Most recently, in April 2021, the NLRB IG issued a management issues memo to the NMB Board highlighting several management concerns reported by NMB employees. For example, the memo stated that the duties of the Record Officer position were not clearly defined and that an attorney was assigned to this position despite not having any experience in managing a records system.

Outside of issues raised by the NLRB IG and other third parties, NMB has made some recent improvements in its internal process to identify potential management and oversight challenges across departments. For example, in fiscal year 2021, the Chief Financial Officer conducted a new internal controls review of all of NMB's offices and said he plans to conduct these reviews annually moving forward. The purpose of this review is to ensure that adequate safeguards against waste, fraud, and abuse are in place for all offices. Additionally, NMB Board Members said they plan to consider creating a new position, similar to the former Chief of Staff position, to help perform managerial duties and improve coordination across departments.<sup>18</sup>

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### NMB Tracks and Addresses Issues Identified by Selected Third-Party Entities but Does Not for Issues Identified by the NLRB IG

NMB has taken steps to track and address issues identified in third-party audits conducted by us, OPM, and independent financial auditors. Specifically, NMB's policies and procedures call for NMB to coordinate with the auditing parties and to follow up on audits conducted by the external parties.<sup>19</sup> NMB's policy is also to develop corrective action plans to track and address challenges that have been identified through these audits.

However, NMB officials said that NMB currently does not have a systematic process in place to track and address all issues received

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<sup>18</sup>When we spoke to NMB Board Members in October 2021, they explained that the President's nominee for a new Board Member was under consideration by the Senate, and any discussion of a new position would wait until an official was appointed. On December 7, 2021, the Senate appointed a new NMB Board Member.

<sup>19</sup>Similarly, OMB Circular A-123 requires agencies to consider GAO audit findings in identifying deficiencies in internal control, and to create a corrective action plan that addresses these deficiencies, including critical milestones that affect the overall schedule and performance of the actions needed to resolve deficiencies.

through the independent hotline that the NLRB IG manages under the memorandum of understanding with NMB. Officials said there is no such process, in part, because NMB is a small agency and OLA has had competing interests and priorities. At the time of our review, NMB officials stated that they were working on improving their record of issues, including by developing a correspondence file to document concerns reported by airline and railway industry employees through the NLRB IG hotline. They agreed that having a process to track and address all issues received from the NLRB IG would be helpful.

NMB has begun to take steps to address some of the management and oversight issues identified in the NLRB IG's 2021 management issues memo. For example, in response to an information technology contracting issue raised in the memo, NMB officials said they designated a staff member in the Office of Information Service to represent NMB in issues related to agency contracts, including those for using information technology systems. However, as with issues raised through the NLRB IG hotline, NMB officials said the agency does not have a systematic process to track the issue to help ensure timely actions are taken.

Standards for Internal Control in the Federal Government state that management should remediate identified internal control deficiencies on a timely basis.<sup>20</sup> Further, management should evaluate and document internal control issues and determine corrective actions for these deficiencies on a timely basis. Without a systematic process to track and address issues received through the hotline and other issues raised by the NLRB IG, NMB cannot ensure corrective actions are implemented in a timely manner.

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## Conclusions

Given the important role NMB plays in preventing transportation disruptions in the air and rail industries, it is critical to ensure efficient oversight of its operations. NMB has fully implemented seven of the 10 recommendations. By implementing the remaining three recommendations, NMB will mitigate its information security risks. Further, by developing a process to address issues raised by the NLRB

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<sup>20</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

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IG, NMB could better ensure that it is taking appropriate and timely actions to manage and oversee its operations.

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## Recommendations for Executive Action

We are making the following recommendation to NMB:

The Chairman of NMB should develop a systematic process to track and address issues reported through the NLRB IG hotline or otherwise communicated to NMB by the NLRB IG. (Recommendation 1)

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## Agency Comments and Our Evaluation

We provided a draft of this report to NMB for review and comment. NMB agreed with our recommendation verbally and by email, and provided technical comments, which we incorporated as appropriate.

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 [locked@gao.gov](mailto:locked@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 II.



Dawn Locke  
Acting Director, Education, Workforce, and Income Security Issues

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

Since our 2020 report, NMB has made progress in implementing key practices to address our past recommendations related to information privacy and security.<sup>1</sup> Table 2 summarizes the extent to which NMB is following these key practices.<sup>2</sup>

**Table 2: Extent to Which the National Mediation Board (NMB) Is Following Key Practices for Information Privacy and Security**

Category	Key Practice for	Extent NMB is following <sup>a</sup>	Status of NMB's actions taken to implement key practices and any additional actions needed
Information Privacy	1. Assign agency official responsible for information privacy	Following	NMB officials stated that the agency appointed the current senior agency official for privacy in October 2020.
Information Privacy	2. Establish policies and procedures for privacy protections	Partially following	As we previously reported, 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. NMB previously stated that the policy would be updated by the end of fiscal year 2020; however, it has not been updated as of January 2022. According to NMB, the Board is reviewing this policy; however, officials did not provide a specific timeframe for completing this review.

<sup>1</sup>GAO, *National Mediation Board: Additional Actions Needed to Fully Implement Prior GAO Recommendations and Improve Agency Management and Oversight*, [GAO-20-236](#) (Washington, D.C.: Feb. 14, 2020).

<sup>2</sup>Based on our prior work, we assess whether NMB is either (1) following key practices—taking appropriate actions and has a formal plan, policy, or other document; (2) partially following key practices—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 key practices—taking little or no action to address this particular practice.

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

<b>Category</b>	<b>Key Practice for</b>	<b>Extent NMB is following<sup>a</sup></b>	<b>Status of NMB's actions taken to implement key practices and any additional actions needed</b>
<b>Information Privacy</b>	3. Conduct privacy impact assessments <sup>b</sup> for systems containing personally identifiable information	Following	In mid-2020, NMB documented privacy impact assessments for its enterprise network. NMB concluded that no system of records notices would be required per the Office of Management and Budget's (OMB) requirements because individual records were not retrievable by personal identifier. <sup>c</sup>
<b>Information Privacy</b>	4. Issue system of records notices <sup>d</sup>	Following	As a result of its privacy impact assessments, NMB determined that it did not need to issue system of records notices.



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

<b>Category</b>	<b>Key Practice for</b>	<b>Extent NMB is following<sup>a</sup></b>	<b>Status of NMB's actions taken to implement key practices and any additional actions needed</b>
<b>Information Security</b>	1. Conduct periodic risk assessments that consider cyber threats and vulnerabilities	Partially following	NMB's IT security policy requires periodic risk assessment. NMB officials stated that they rely on FISMA reports to identify and assess risk. However, these reports do not discuss the likelihood or potential impact of these risks being exploited to perform unauthorized actions, as required. NMB officials stated that a detailed risk assessment is underway for the enterprise network.
<b>Information Security</b>	2. Develop and implement risk-based policies and procedures to ensure compliance with applicable standards and guidance including system configuration requirements	Following	NMB has developed an information security policy that includes risk assessments and oversight of third-party providers.
<b>Information Security</b>	3. Develop system security plans that cover networks, facilities, and systems or groups of systems, as appropriate	Following	NMB has updated the system security plan for its enterprise network. This plan now includes details on both applicable and non-applicable controls as recommended by the National Institute of Standards and Technology guidance. <sup>e</sup>
<b>Information Security</b>	4. Provide security awareness training for agency employees and contractors	Following	NMB's Awareness and Training Procedure requires annual security awareness training. In fiscal year 2021, NMB provided evidence that all employees have completed the training.
<b>Information Security</b>	5. Conduct periodic management testing and evaluation that includes testing of all major systems at least annually	Partially following	NMB's Chief Information Officer stated that the agency is in the process of assessing their systems and expects to complete the assessment by the end of fiscal year 2022. NMB also provided evidence that they reviewed the existing security assessments for cloud service providers.
<b>Information Security</b>	6. Establish a remedial action process to address identified information security control weaknesses	Following	NMB has documented a remedial action process through its information security policy. Its plan of action includes information that meet OMB's requirements such as planned completion dates and changes to milestones, among other items. <sup>f</sup>

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

Category	Key Practice for	Extent NMB is following <sup>a</sup>	Status of NMB's actions taken to implement key practices and any additional actions needed
Information Security	7. Establish security-incident procedures for detecting, reporting, and responding to incidents	Following	NMB's information security policy has information on handling security incidents and requires all systems to have incident response plans. The incident response plan for NMB's enterprise network includes notifying the federal information security incident center, law enforcement, and general counsel when issues arise, as appropriate. It does not specify notifying an inspector general because NMB does not have one. <sup>9</sup>
Information Security	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, dated March 2016. However, this plan contains outdated roles and responsibilities. For example, the policy reflects the role of chief of staff that no longer exists in the agency. The agency did provide contingency plans for its enterprise network.

Source: GAO analysis of relevant government-wide documents and security guidance, NMB documents, interviews with NMB officials, and past GAO reports. | GAO-22-105266

<sup>a</sup>We assessed whether NMB is either (1) following key practices—taking appropriate actions and has a formal plan, policy, or other document; (2) partially following key practices—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 key practices—taking little or no action to address this particular practice. For more information on our evaluation of NMB's information privacy practices in February 2020, see [GAO-20-236](#).

<sup>b</sup>The E-Government Act of 2002 requires agencies to conduct a privacy impact assessment. This assessment is an analysis of how personal information is collected, stored, shared, and managed in a federal system.

<sup>c</sup>Office 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).

<sup>d</sup>A 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 required by the Privacy Act of 1974 and are published in the Federal Register. These notices 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, and are posted to agency websites.

<sup>e</sup>National Institute of Standards and Technology, *Security and Privacy Controls for Information Systems and Organizations*, SP-800-53, Revision 5 (Gaithersburg, MD: September 2020).

<sup>f</sup>Office of Management and Budget, *Guidance for Preparing and Submitting Security Plans of Action and Milestones*, M-02-01 (Washington, D.C.: Oct. 17, 2001).

<sup>g</sup>Federal law does not establish an IG for NMB, nor is the agency subject to oversight by an IG of another agency.

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## Appendix II: GAO Contact and Staff Acknowledgments

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### GAO Contact

Dawn Locke, (202) 512-7215 or [locked@gao.gov](mailto:locked@gao.gov)

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### Staff Acknowledgments

In addition to the contact named above, Rebecca Woiwode (Assistant Director), Ashanta Williams (Analyst in Charge), Peter Choi, and Ada Nwadugbo made key contributions to this report. Additional assistance was provided by Mary Crenshaw, Holly Dye, Marissa Jones Friedman, Drew Nelson, James Rebbe, Monica Savoy, Almeta Spencer, Daniel Swartz, Curtia Taylor, LaDonna Towler, Manuel Valverde, Edward Varty, and Adam Wendel.

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