



March 2018

NATIONAL MEDIATION BOARD

Progress Made on GAO Recommendations, but Actions Needed to Address Management Challenges

Accessible Version

GAO Highlights

Highlights of [GAO-18-301](#), a report to congressional committees

Why GAO Did This Study

NMB was established under the Railway Labor Act to facilitate labor relations for railroads and airlines 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 and February 2016, included eight recommendations for NMB based on assessments of policies and processes in several management and program areas.

This third report examines the (1) progress NMB has made to fully implement past GAO recommendations, and (2) challenges NMB faces in managing its operations. GAO reviewed relevant federal laws, regulations, and NMB documents, such as its procurement and travel policies; examined the results of a 2017 employee survey; interviewed NMB officials; and investigated a potential conflict of interest at NMB.

What GAO Recommends

To improve its operations, NMB should develop and execute a plan to address the rail arbitration case backlog; follow up on employee survey results, including conducting an organizational climate assessment; and implement internal controls to ensure that employee requests for outside employment, travel, and telework comply with federal law. NMB agreed with these recommendations, and said that it is taking actions to address them. NMB also said that it is taking actions to fully implement the remaining recommendations from GAO's 2013 and 2016 reports.

View [GAO-18-301](#). For more information, contact Cindy Brown Barnes at (202) 512-7215 or brownbarnesc@gao.gov.

March 2018

NATIONAL MEDIATION BOARD

Progress Made on GAO Recommendations, but Actions Needed to Address Management Challenges

What GAO Found

The National Mediation Board (NMB), which facilitates labor relations for railroads and airlines, has implemented five of the eight recommendations GAO made in its December 2013 and February 2016 reports (see table). The three remaining recommendations—on information security, information privacy, and rail grievance arbitration—are not yet fully implemented.

Regarding information security, GAO found that NMB has made progress but is only partially following key practices. On information privacy, GAO found that NMB was following two of four key privacy practices but has not yet, among other things, assessed the privacy risks of its information systems. Finally, the agency has taken steps to track rail grievance arbitration cases, but still cannot perform needed analysis of the data. At the same time, NMB reports its backlog of these cases has grown from about 2,400 at the end of fiscal year 2011 to over 8,400 at the end of fiscal year 2017. While NMB has taken some steps to reduce this growing number of cases, it does not have a specific plan to address the backlog. Without such a plan, the backlog could continue to increase.

Status of GAO's 2013 and 2016 Recommendations to NMB

Recommendation Area	Implemented	Not Fully Implemented
Strategic Plan	Yes	--
Performance Measures	Yes	--
Workforce Plan	Yes	--
Audit Response	Yes	--
Procurement	Yes	--
Information Security	--	Yes
Information Privacy	--	Yes
Rail Grievance Arbitration	--	Yes

Source: GAO analysis of National Mediation Board (NMB) documents | GAO 18-301

NMB also faces other management challenges. First, although federal employees may not use their public office for private gain, NMB does not have controls in place to ensure that this is followed. During this review, GAO found that a lack of internal controls may have permitted a former manager to represent himself as a government employee while conducting business for his private companies. GAO plans to refer the matter to the appropriate authority for further investigation. Second, NMB employees expressed concerns in a 2017 employee survey about issues such as promotions, training, and leadership. NMB officials said they have not yet taken actions in response to survey results or conducted an internal climate assessment, even though such actions were promised in NMB's strategic plan. Finally, some of NMB's travel and telework policies are inconsistent with federal law and not consistently enforced. For example, NMB management approved rental of a luxury car in one case, which may have been prohibited by federal regulations. Oversight of a cognizant Inspector General (IG), as suggested in GAO's 2013 report, might have prevented or minimized many of the issues GAO identified. NMB recently established an agreement with the National Labor Relations Board IG to operate a telephone fraud hotline; however, ongoing oversight is needed to identify and assist NMB with addressing agency challenges.

Contents

Letter	1
Background	4
NMB Has Implemented Five of GAO's Past Eight Recommendations but Additional Actions Are Needed to Address Remaining Three	7
Better Oversight Could Assist NMB in Addressing Conflicts of Interest, Employee Concerns, Travel, and Telework Requirements	18
Conclusions	26
Recommendations for Executive Action	27
Agency Comments and Our Evaluation	27
<hr/>	
Appendix I: National Mediation Board Documents Compared with Statutory and Policy Requirements	31
Appendix II: Status of National Mediation Board Practices in Information Security and Privacy	34
Appendix III: Comments from the National Mediation Board	37
Appendix IV: GAO Contact and Staff Acknowledgments	43
Appendix V: Accessible Data	44
Data Tables	44
Agency Comment Letter	44
<hr/>	
Tables	
Table 1: Status of 2013 and 2016 GAO Recommendations to the National Mediation Board (NMB)	8
Table 2: Number of National Mediation Board (NMB) Rail Arbitration Cases per Fiscal Year, 2011- 2017	16
Table 3: GAO Comparison of Key National Mediation Board (NMB) Documents with Federal Laws, Guidance, and Leading Practices	31
Table 4: Extent to Which the National Mediation Board (NMB) Is Following Key Practices for Information Security and Privacy	34
Data for Figure 1: Organization of the National Mediation Board	44

Figure

Figure 1: Organization of the National Mediation Board

5

Abbreviations

FTR	Federal Travel Regulation
GPRA	Government Performance and Results Act of 1993
GPRAMA	GPRA Modernization Act of 2010
IG	Inspector General
NLRB	National Labor Relations Board
NMB	National Mediation Board
OGE	Office of Government Ethics
OMB	Office of Management and Budget
OPM	Office of Personnel Management
RLA	Railway Labor A

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.



March 22, 2018

The Honorable John Thune
Chairman
The Honorable Bill Nelson
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 Bill Shuster
Chairman
The Honorable Peter A. DeFazio
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

The National Mediation Board (NMB) plays a vital role in helping airline and railway carriers resolve labor disputes to avoid work stoppages, which could have severe economic consequences for the nation. A 2011 estimate put the cost of a work stoppage in the railroad industry alone at \$2 billion per day. NMB, created by a 1934 amendment to the Railway Labor Act (RLA), oversees union elections and provides mediation, arbitration, and other services to resolve railroad and airline labor disputes, including resolving disputes over issues such as working conditions, rates of pay, and union representation.¹ Currently, NMB delivers services to management and labor unions at 100 commercial

¹ The 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. See, 45 U.S.C. §§ 152, First, Sixth, 153 and 155.

airlines and nearly 500 railroads. NMB has 51 full-time staff positions and had a fiscal year 2016 appropriation of approximately \$13 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 In response to this provision, we issued a report in December 2013 with seven recommendations related to key management areas, such as strategic planning, performance measurement, and financial management.³ Because there is limited budgetary and human capital oversight of NMB, and because of concerns in these key areas, we also suggested that Congress consider authorizing an Inspector General (IG) at an appropriate federal agency to provide independent audit and investigative oversight of NMB. We issued a second report in February 2016 that provided an assessment of NMB's progress in implementing our 2013 recommendations and made an additional recommendation related to procurement.⁴

This is GAO's third review of NMB and examines the:

1. progress NMB has made to fully implement past GAO recommendations, and
2. challenges, if any, NMB faces in managing its operations.

To address our objectives, we reviewed relevant federal laws, guidance, and regulations along with previous GAO work. We also assessed NMB documents related to key areas such as strategic planning, information security, information privacy, procurement, and travel using criteria such as Standards for Internal Control in the Federal Government,⁵ provisions of the Federal Information Security Modernization Act of 2014 (FISMA

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

³ 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).

⁴ 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).

⁵ GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

2014),⁶ and best practices in procurement developed by GAO in prior work.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. Appendix II provides information on the extent to which NMB is following key practices for information security and privacy.

We reviewed 2017 Federal Employee Viewpoint Survey data for NMB to help identify employee concerns, if any. In 2017, the Office of Personnel Management (OPM) sent surveys to all 34 eligible NMB employees, and 59 percent responded. We determined that data from this survey were sufficiently reliable for our purposes. While we cannot generalize results across the agency, in part because of the small number of employees who responded to the survey, the survey provided information on employee engagement and organizational climate at NMB. We also provided NMB employees an opportunity to report any concerns in order to address them during our audit through our FraudNet Hotline from July 2017 to September 2017 by sending an email with information on FraudNet and how to contact the hotline by email, phone number, or website form.⁸

We also conducted an investigation into an alleged conflict of interest on the part of a former NMB manager. As part of this investigation, we

⁶ Information security program and evaluation requirements for federal agencies were established by the Federal Information Security Management Act of 2002 (FISMA 2002). FISMA 2002 was largely superseded by the Federal Information Security Modernization Act of 2014 (FISMA 2014). 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.

⁷ To assess NMB's procurement function, we used best practices for acquisition developed in GAO, *Framework for Assessing the Acquisition Function at Federal Agencies*, [GAO-05-218G](#) (Washington, D.C.: September 2005). To develop this framework, we consulted with federal government and industry experts in the areas of human capital, information management, financial management, and acquisition practices and prior GAO work.

⁸ FraudNet is operated by GAO to facilitate the reporting of allegations of fraud, waste, abuse, or mismanagement of federal funds. When federal employees, contractors, and members of the general public want to report such allegations, they can do so by filling out a FraudNet form on the Internet. FraudNet's telephone number, fax number, mailing address, and e-mail are also available.

interviewed NMB officials and reviewed pertinent documents, emails, and other records.

We interviewed NMB officials and NMB board members who were serving as of June 2017. We also selected external stakeholders to interview by identifying rail and air management groups that reviewed NMB's strategic plan and groups that were interviewed for the December 2013 and February 2016 GAO reports. The results of these interviews are not generalizable to all NMB stakeholders.⁹ Further, we interviewed officials at OPM, the Department of the Interior, and the Department of the Treasury regarding services these agencies provide to NMB.

We conducted the performance audit portion of our work from January 2017 to March 2018 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. We conducted our related investigative work in accordance with investigation standards prescribed by the Council of the Inspectors General on Integrity and Efficiency.

Background

NMB's Organization and Mission

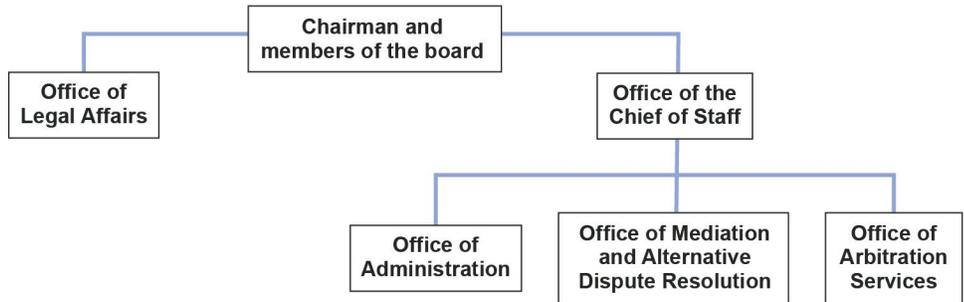
NMB is headed by a three-member board, with each member appointed by the President and confirmed by the Senate for a term of 3 years.¹⁰ From February 2017, when one member resigned, until November 2017, the board had only two members. Three board members—two new and one c—were confirmed by the Senate in November 2017. While the board provides overall direction for the agency, day-to-day administration

⁹ Interviewees for our December 2013 report were identified by issue area experts within GAO and a literature review. See [GAO-14-5](#).

¹⁰ 45 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.

of the agency is provided by NMB’s General Counsel within the Office of Legal Affairs and the Chief of Staff (see fig. 1).

Figure 1: Organization of the National Mediation Board



Source: National Mediation Board (NMB). | GAO-18-301

NMB’s mission is to provide for the independence of air and rail carriers and employees in matters of self-organization, avoid interruption to commerce conducted through the operation of those carriers, and administer adjustment boards¹¹ as well as develop complementary strategies to resolve disputes. To fulfill its mission, NMB has three program areas:

- Representation: Unions are selected by rail or air carrier employees for the purposes of collective bargaining through secret-ballot elections conducted by NMB. If there is a question concerning representation of a specific craft or class,¹² NMB is charged with resolving the representation dispute through its 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 that can occur between management and labor during collective bargaining negotiations.¹⁴

¹¹ If a carrier and employee cannot resolve a dispute, the RLA permits a party to refer the dispute to arbitration before an adjustment board created by the rail or air industry. The adjustment board consists of a carrier representative, a union representative, and a neutral arbitrator. In this capacity, the arbitrator is called upon to break a tie.

¹² 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.

¹³ 45 U.S.C. § 152, Ninth.

¹⁴ 45 U.S.C. § 155, First. In general, mediation is a process through which disputing parties, with assistance from a neutral third party (known as a mediator), seek ways to settle their dispute.

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. NMB may also 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.

- Arbitration: The RLA also provides for grievance arbitration to help resolve disagreements between carriers and unions over how to interpret and apply provisions of existing collective bargaining agreements.¹⁵ For example, employees may file grievances if they believe they were wrongfully fired or disciplined in violation of the agreement. If the carrier and the employee cannot resolve the grievance, the RLA permits either of these parties to refer the dispute to arbitration before an adjustment board.¹⁶ 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.

Executive Branch Oversight of the NMB

The Office of Management and Budget (OMB) and OPM have key oversight responsibilities for all federal agencies, including the NMB. Among other things, OMB is responsible for preparing and implementing the President’s annual budget and for providing oversight of agencies’ management, including information technology and procurement, and for providing guidance to agencies on how to comply with the GPRA

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

¹⁶ The arbitration of unresolved grievances in the rail industry takes place before either the National Railroad Adjustment Board, created by the RLA, or adjustment boards established by the parties (rail carriers and unions), known as Public Law Boards or Special Boards of Adjustment. 45 U.S.C. § 153, First (i), Second; 29 C.F.R. § 1207.1. These adjustment boards generally are made up of an equal number of carrier and union representatives. The RLA gave NMB the authority to create a National Air Transport Adjustment Board (45 U.S.C. § 185), but it has not done so. Instead, in the airline industry, parties jointly create their own temporary special boards of adjustment, called System Boards, through collective bargaining agreements.

Modernization Act of 2010 (GPRAMA).¹⁷ OPM is the central personnel management agency of the federal government charged with administering and enforcing federal civil service laws, regulations, and rules. OPM is also responsible for maintaining a personnel management oversight program to ensure that agencies comply with merit system principles, civil service statutes and regulations, and standards set by OPM, and conducts audits of agencies' human capital programs. In addition, OPM annually administers the Federal Employee Viewpoint Survey to solicit employee views on their agency, including how they view agency leadership, collaboration, and other issues.

NMB is not among those agencies required to have an IG, nor is it subject to oversight by an IG of another agency. The Inspector General Act of 1978, as amended, authorizes IGs within various departments and agencies.¹⁸ 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.

NMB Has Implemented Five of GAO's Past Eight Recommendations but Additional Actions Are Needed to Address Remaining Three

NMB has implemented five of the eight recommendations GAO made in December 2013 and February 2016 (see table 1). For the three remaining recommendations, NMB needs to take additional actions to strengthen operations in the areas of information security, information privacy, and rail grievance arbitration. Without full implementation of these recommendations, NMB may be missing opportunities to improve performance and mitigate risks in these program and management areas.

¹⁷ Pub. L. No. 111-352, 124 Stat. 3866 (2011). GPRAMA stands for the Government Performance and Results Act.

¹⁸ Pub. L. No. 95-452, 92 Stat. 1101 (1978) (codified as amended at 5 U.S.C. App).

Table 1: Status of 2013 and 2016 GAO Recommendations to the National Mediation Board (NMB)

GAO's 2013 report recommendations	Additional actions needed to implement recommendations as of February 2016^a	Status of recommendations as of March 2018
Develop a formal strategic planning process to fully implement key required elements of strategic planning, including a formal process to obtain congressional and stakeholder input.	Develop formal written policies and procedures governing its planning process.	Implemented
Develop, and include in its performance plan, performance goals and measures that contain required elements to demonstrate results.	Ensure performance goals meet all guidelines for federal performance management.	Implemented
Develop a strategic workforce plan that (1) involves input from top management, employees, and other stakeholders; (2) identifies critical skills and competencies needed by NMB; (3) identifies strategies, such as training, to address any gaps; and (4) provides for cost-effective evaluations of these strategic workforce planning efforts. This plan should also address succession for the significant proportion of NMB staff and senior managers who are eligible to retire in the next few years.	Formally include stakeholders in planning process and evaluate workforce planning and other human capital efforts.	Implemented
Develop and implement a formal mechanism to ensure the prompt resolution of findings and recommendations by independent auditors, including clearly assigning responsibility for this follow-up to agency management.	Expand the written process to address all audits.	Implemented
Develop and fully implement key components of an information security program in accordance with FISMA. ^b	Develop and implement policies and procedures and assess third-party providers' implementation of security requirements.	Not fully implemented
Establish a privacy program that includes conducting privacy impact assessments and issuing system of record notices for systems that contain personally identifiable information.	Assess impact on privacy and issue notices about personally identifiable information NMB uses and shares.	Not fully implemented
GAO's 2013 report recommendations	Additional actions needed to implement recommendations as of 2016^a	Status of recommendations as of 2018
In order to better inform its decisions about managing the rail grievance arbitration process, including addressing the backlog of cases, NMB should collect and analyze data on the types of grievances filed, and their disposition. NMB should use these data to improve the efficiency of the arbitration process and consider, as part of this effort, whether to establish fees for arbitration services. If NMB determines that the establishment of fees would improve the efficiency of the arbitration process, it should impose such fees or seek legislative authority to do so, as necessary.	Collect data on all cases and analyze.	Not fully implemented
GAO's 2016 report recommendation Develop and implement written policies and processes consistent with its new procurement environment	Not applicable	Implemented

Source: GAO-14-5, GAO-16-240. | GAO-18-301

^aIn our 2016 report, we reported that NMB made some progress in addressing GAO's previous recommendations made in December 2013; however, additional actions were needed to fully implement those recommendations and strengthen operations.

^bInformation security program and evaluation requirements for federal agencies were established by the Federal Information Security Management Act of 2002 (FISMA 2002). FISMA 2002 was largely superseded by the Federal Information Security Modernization Act of 2014 (FISMA 2014). FISMA 2014 retains many of the requirements for federal agencies' information security programs previously set by the 2002 law.

NMB Implemented Recommendations to Improve Strategic Plan, Performance Measures, Workforce Plan, Audit Response, and Procurement

Strategic Plan

In our 2016 review, we found that NMB had implemented a strategic planning process but had not formalized it through written policies and procedures. In fiscal year 2014, NMB developed and published a strategic plan covering fiscal years 2014 through 2019, which we determined was largely consistent with OMB guidance¹⁹ on implementing the GPRA Modernization Act of 2010 (GPRAMA).²⁰ However, the agency had not developed a written policy or set of procedures outlining its strategic planning process.

GAO 2013 Recommendation: NMB should develop a formal strategic planning process to fully implement key required elements of strategic planning, including a formal process to obtain congressional and stakeholder input.

Source: GAO-14-5. | GAO-18-301

In our current review, we found that NMB had implemented this recommendation. Specifically, NMB developed a formalized process to define responsibilities, assign key roles, and delegate authority to staff in its strategic plan. In addition, NMB has implemented an annual planning process for reviewing and updating its strategic plan.

¹⁹ OMB, *Strategic Plans, Annual Performance Plans, Performance Reviews, and Annual Program Performance Reports*, Circular No. A-11, Part 6 (Washington, D.C.: July 2016).

²⁰ In 1993, Congress passed the Government Performance and Results Act (GPRA), which established strategic planning, performance planning, and performance reporting as a framework for agencies to communicate progress in achieving their missions. Pub. L. No. 103-62, 107 Stat. 285 (1993). The GPRA Modernization Act of 2010 (GPRAMA), enacted in 2011, established some important changes to existing requirements by placing a heightened emphasis on priority-setting, cross-organizational collaboration to achieve shared goals, and the use and analysis of goals and measurements to improve outcomes. GPRAMA enhanced agency-level planning and reporting requirements and required agencies to have additional leadership involvement and accountability. See, Pub. L. No. 111-352, 124 Stat. 3866 (2011).

GAO 2013 Recommendation: NMB should develop and include in its performance plan, performance goals and measures that contain required elements to demonstrate results.

Source: [GAO-14-5](#) | GAO-18-301

Performance Measures

In our 2016 review, we reported that none of NMB's performance goals followed all elements of OMB's guidance for implementing GPRAMA.²¹ NMB officials told us that it is difficult for the agency to design performance goals because some outcomes are out of its control, such as how long it takes parties to reach agreement through mediation. However, our prior work has shown there are a number of strategies that federal agencies can use to reduce the influence of external factors on agencies' measures.²²

In our current review, we found that NMB had implemented this recommendation. We assessed the extent to which NMB has developed performance goals to meet all guidelines for federal performance management and determined that NMB's performance goals either met or substantially met federal guidelines. For example, to facilitate the settlement of disputes, NMB's arbitration department is to acknowledge all external requests within 1 business day and the director is to make case assignments within 2 business days of deadline for requests.

²¹ Consistent with GPRAMA, OMB defines a performance goal as a statement of the level of performance to be accomplished within a time frame, expressed as a tangible, measurable objective or as a quantitative standard, value, or rate. For implementation of GPRAMA, OMB states that a performance goal includes a performance indicator, a target, and a time period. See OMB, Preparation and Submission of Strategic Plans, Annual Performance Plans, and Annual Performance Reports, Circular No. A-11, Part 6 (July 2016).

²² These strategies are (1) selecting a mix of outcome goals of which the agency has varying levels of control, (2) redefining the scope of a strategic goal to focus on a more narrow range of actual activities, (3) disaggregating goals for distinct target populations for which the agency has different expectations, and (4) using data on external factors to statistically adjust for their net effect on the desired outcome. See GAO, *Managing for Results: Measuring Program Results that Are Under Limited Federal Control*, [GAO/GGD-99-16](#) (Washington, D.C.: Dec. 11, 1998).

GAO 2013 Recommendation: NMB should develop a strategic workforce plan that (1) involves input from top management, employees, and other stakeholders; (2) identifies critical skills and competencies needed by NMB; (3) identifies strategies, such as training, to address any gaps; and (4) provides for cost-effective evaluations of these strategic workforce planning efforts. This plan should also address succession for the significant proportion of NMB staff and senior managers who are eligible to retire in the next few years.

Source: [GAO-14-5](#) | [GAO-18-301](#)

Workforce Plan

In our 2016 review, we found that NMB did not formally solicit feedback from staff and stakeholders on its workforce plan. NMB officials told us the agency developed its workforce plan through a collaborative, agency-wide process, but they did not formally solicit feedback from stakeholders on the plan and the plan did not specifically call for staff and stakeholder involvement. In addition, NMB's workforce and succession plan did not address the monitoring and evaluation of its workforce planning efforts, and the performance goals related to human capital did not meet OMB guidance.

In our current review, we determined that NMB had implemented this recommendation. NMB officials stated that during the past fiscal year, the agency updated its strategic workforce plan and sent the plan to stakeholders for comments. NMB also took steps to formally include internal and external stakeholders in its workforce planning process. In addition, its strategic workforce plan contains strategies to evaluate agency workforce planning and other human capital efforts. For example, NMB's strategic workforce plan contains human capital goals, such as an annual review of its training policy; individual development plans for its staff; a recruitment plan; and a succession plan. In addition, NMB developed a workforce policy that includes a performance management process to monitor and evaluate its staff that is consistent with federal internal control standards.

GAO 2013 Recommendation: NMB should develop and implement a formal mechanism to ensure the prompt resolution of findings and recommendations by independent auditors, including clearly assigning responsibility for this follow-up to agency management.

Source: [GAO-14-5](#) | [GAO-18-301](#)

Audit Response

In our 2016 review, we found that NMB did not have a formal mechanism to promptly resolve all audit findings consistent with federal internal control standards. Specifically, while NMB drafted a financial audit standard operating procedure in 2014, it did not cover the agency's response to findings from non-financial audits, such as GAO and OPM evaluations. NMB's financial audit document also did not have a formal mechanism to promptly resolve all audit findings consistent with federal internal control standards.²³

²³ Federal internal control standards state that agencies should ensure that the findings of audits and other reviews are promptly resolved. GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 10, 2014).

In this review, we determined that NMB had implemented this recommendation. NMB's audit standard operating procedures now outline the agency process for promptly resolving financial and non-financial audit findings, and those procedures are consistent with federal internal control standards.

GAO 2016 Recommendation: NMB should develop and implement written policies and processes consistent with its new procurement environment.

Source: [GAO-16-240](#) | [GAO-18-301](#)

Procurement

In our 2016 review, we found that NMB had not developed policies and processes for provision of certain procurement functions contained in its interagency agreement with Treasury's Bureau of the Fiscal Service.²⁴ NMB did not have policies and processes in place consistent with internal control standards and best practices.²⁵

In this review, we found that NMB had implemented this recommendation. NMB finalized a procurement operation manual in October 2017 that includes processes for its interagency agreement with the Bureau of the Fiscal Service, and has procurement processes in place that are consistent with federal internal control standards and best practices.

²⁴ Per an interagency agreement between Treasury's Bureau of the Fiscal Service and NMB, Treasury provides NMB with procurement services that include simplified acquisition, contracts, contract administration, and purchase cards.

²⁵ According to the Standards for Internal Control in the Federal Government, control activities are the policies, procedures, techniques, and mechanisms that enforce management's directives and they should be effective in accomplishing the entity's objectives. For example, all transactions are promptly recorded to maintain their relevance and value to management in controlling operations and making decisions. This applies to the entire process or life cycle of a transaction or event, from its initiation and authorization through its final classification in summary records. In addition, management designs control activities so that all transactions are completely and accurately recorded. [GAO-14-704G](#).

NMB Needs Additional Efforts to Improve Information Security, Information Privacy, and Rail Grievance Arbitration

Information Security

In our 2016 review, we reported that NMB had fully transitioned its network infrastructure and records management system into a cloud-computing environment and its financial systems to third-party providers. NMB also took steps to improve its information security program by developing a procedure for handling cyber incidents, and having an agreement in place with Treasury's Bureau of the Fiscal Service to conduct a security assessment of its enterprise network among other things. However, in 2016 we found that NMB was partially following five and minimally following three of the eight key information security practices delineated by GAO in 2013.²⁶ For example, NMB had not developed agency-wide risk-based policies and procedures that govern its information security program, including NMB oversight of third-party providers—entities that provided or managed information systems that supported NMB operations.

GAO 2013 Recommendation: NMB should develop and fully implement key components of an information security program in accordance with FISMA

Source: [GAO-14-5](#) | [GAO-18-301](#)

In our current review, we determined that NMB has made progress in following information security practices, but has not fully implemented GAO's 2013 recommendation. NMB is partially following, meaning some actions have been taken but additional steps remain, all eight of the key information security practices delineated by GAO in 2013. For example, NMB documented a system security plan for its enterprise network, security awareness training guidance, and a continuity of operations policy, among other things. However, NMB has not developed agency-wide policies and procedures for the oversight of third-party providers that support the operations and assets of the agency, and NMB officials

²⁶ We 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 February 2016, see [GAO-16-240](#).

acknowledged that this oversight may need improvement.²⁷ Officials also said the agency did not assess third-party providers' implementation of security requirements to help ensure the effectiveness of information security controls over information resources that support federal operations and assets. For additional details on information security, see appendix II.

GAO 2013 Recommendation: NMB should 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](#) | [GAO-18-301](#)

Information Privacy

In our 2016 review, we reported that NMB was following one of the four key information privacy practices delineated by GAO in 2013.²⁸ Specifically, NMB designated the Assistant Chief of Staff as its senior agency official for privacy. However, the agency was minimally following policies and procedures for privacy protections, privacy impact assessments,²⁹ and system of records notices.³⁰ For example, NMB had not conducted a privacy impact assessment for its financial management systems, which contained the agency's personally identifiable information.

In our current review, we found that NMB has made progress in following information privacy, but still has not fully implemented our 2013 recommendation. Specifically, NMB was following two of the four key privacy practices. For example, NMB designated a privacy officer and finalized its privacy policy containing procedures for protecting sensitive information, including personally identifiable information. However, NMB was only minimally following the other two key privacy practices. First, NMB has not conducted privacy impact assessments. Among other things, such assessments identify privacy risks and the appropriate

²⁷ Each agency shall develop, document, and implement an agency-wide information security program to provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source. See FISMA 2014.

²⁸ For more information on our evaluation of NMB's information privacy practices in February 2016, see [GAO-16-240](#).

²⁹ A 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.

³⁰ 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.

controls to address such risks for its systems or those of third-party providers containing the agency's personally identifiable information. According to the Chief Information Officer, the agency's third-party providers perform their own privacy impact assessments. However, NMB did not provide any documentation on how it oversaw third-party provider assessments. Second, NMB has not issued system of records notices to provide transparency about its possible use of personally identifiable information. For additional details on the extent to which the agency met key information privacy practices, see appendix II.

GAO 2013 Recommendation: NMB should collect and analyze data on the types of grievances filed, and their disposition. NMB should use these data to improve the efficiency of the arbitration process.

Source: [GAO-14-5](#) | GAO-18-301

Rail Grievance Arbitration

In our 2016 review, we found that NMB was collecting data on the types of grievances filed for arbitration for two of the three adjustment boards, which hear grievances in the rail industry.³¹ However, NMB was not able to capture information on the types of grievances filed at the third adjustment board because it did not have the board's codes, and therefore was not able to use this information to analyze the agency's arbitration backlog.

In our current review, we determined that NMB had taken some steps, but has not yet fully addressed this recommendation. For example, NMB's Director of the Office of Arbitration Services stated that the agency has developed its Arbitrator Work Space (AWS) case management system, which assists staff in monitoring, recording, and tracking the activities of rail arbitration cases. However, according to this official, AWS does not allow the agency to analyze the data because NMB still cannot capture information on grievance types from one of the three adjustment boards, and AWS has limited reporting capabilities.³² After discussing the preliminary findings with NMB officials, they provided documentation that NMB requested this board to add subject codes to all of its open rail arbitration cases by March 1, 2018, and thereafter include the subject code when submitting a notice of intent for arbitration.

³¹ Grievance arbitration cases in the rail industry can involve a wide range of grievances, such as wrongful dismissals, unfair labor practices, and rights to additional pay.

³² AWS only generates an Arbitrator Caseload Report, which tracks cases assigned, cases heard, and cases that are late. Other than this one report, the agency uses AWS to monitor the individual progress of arbitration cases.

In addition, we found that the agency’s rail grievance arbitration backlog has more than tripled since 2011, increasing from about 2,400 cases at the end of fiscal year 2011 to more than 8,500 cases and the end of fiscal year 2017. NMB arbitration caseload has increased over the last 5 years by about 1,000 cases per year (see table 2).

Table 2: Number of National Mediation Board (NMB) Rail Arbitration Cases per Fiscal Year, 2011- 2017

Fiscal year	Beginning	New	Resolved	End
2011	2,770	3,908	4,294	2,384
2012	2,384	3,569	3,869	2,084
2013	2,084	5,230	3,737	3,803
2014	3,803	4,313	2,946	5,170
2015	5,170	3,816	2,702	6,247
2016	6,247	4,754	3,562	7,455
2017	7,455	4,148	3,057	8,546

Source: GAO analysis of NMB documents and interviews with NMB officials. | GAO-18-301

NMB officials said the growing backlog is due to a number of factors the agency cannot control. For example, NMB’s Director of the Office of Arbitration Services stated that carriers and unions are filing more cases because they do not have to pay for arbitration.³³ In addition, he said that rail unions that do not have a centralized office through which arbitration cases are processed tend to file more cases. NMB projected that the number of rail arbitration cases would continue to increase through fiscal year 2017 and beyond due to the number of new incoming cases and the limited number of cases being closed.³⁴

NMB has taken steps to reduce the backlog. For example, in 2016, NMB closed 409 inactive rail arbitration cases from rail carriers and unions that were 3 or more years old. In addition, NMB proposed grievance mediation to rail unions in lieu of grievance arbitration to help expedite the resolution of disputes. As of August 2017 there were 323 rail arbitration cases undergoing grievance mediation. These actions have resulted in NMB

³³ In the airline industry, the parties pay the costs of arbitration. In the railroad industry, consistent with the requirements of the RLA, NMB pays the fee and travel expenses of the arbitrator.

³⁴ National Mediation Board, *Fiscal Year 2017 Congressional Budget Submission* (Washington, D.C.: Feb.9, 2016).

addressing about 10 percent of pending rail arbitration cases that were open at the beginning of fiscal year 2017.

Nevertheless, NMB does not have a specific plan and related processes to address the backlog. However, identifying and assessing the risks associated with the backlog and developing a plan and associated processes to effectively manage are essential. Such identification, assessment, and management activities are key to implementing effective risk management, and to addressing the backlog.³⁵

In developing such a plan, NMB has options that it could consider such as reevaluating its 60/120 rule;³⁶ setting additional timeframes to its grievance arbitration process; modifying its AWS case management system to include reports that are more comprehensive; and developing methods to motivate carriers, unions, and arbitrators to effective and timely resolution of rail grievance arbitration cases.

³⁵ According to federal internal control standards, an agency should assess the risks as it seeks to achieve its objectives. This type of assessment provides the basis for developing appropriate risk responses that an agency can use to manage its outcomes. [GAO-14-704G](#).

³⁶ According to an NMB official, NMB's 60/120 rule requires arbitrators to act by issuing a ruling or setting a date for a hearing within 60 days of case assignment and once a hearing date is set, it must be conducted within 120 days of case assignment.

Better Oversight Could Assist NMB in Addressing Conflicts of Interest, Employee Concerns, Travel, and Telework Requirements

NMB Lacks Controls to Ensure Employees Follow Ethical Standards for Outside Employment and Activities to Avoid Conflicts of Interest

All executive branch employees are required to comply with regulations published by the Office of Government Ethics³⁷ (OGE) on standards of ethical conduct.³⁸ OGE's regulations on the standards of ethical conduct for employees of the executive branch state that an employee may not use their public office for private gain.³⁹ NMB officials said that the agency does not have a stand-alone ethics policy for its employees, but follows OGE guidelines, including requiring employees to complete annual ethics training, and documenting attendance to ensure compliance. NMB officials said they also tell employees they should consult the agency ethics officer with any questions, and seek the officer's approval before engaging in outside employment or speaking engagements.

Our investigation of a former NMB manager identified activities that were inconsistent with NMB policies. Among other things, NMB's ethics officer expressed concern that the former manager may have represented himself as an NMB employee while conducting business for his privately owned companies. In addition, the officer stated that the manager may have claimed hours worked for the government inappropriately. Additional details on this investigative matter are not included in this report—we plan to refer the matter to the appropriate investigative authority.

³⁷ The Office of Government Ethics oversees the executive branch ethics program.

³⁸ 5 C.F.R. Part 2635.

³⁹ 5 C.F.R. § 2635.702.

An effective ethics program includes monitoring and auditing to detect potential improper conduct.⁴⁰ Our prior work has found an effective internal control program includes activities designed to fulfill an organization's responsibility,⁴¹ including ensuring that its employees are following the ethical standards for government employees. Although NMB is a small agency, it still needs to ensure that its staff are complying with standards of ethical conduct by implementing needed controls.

However, NMB officials told us the agency does not have any formal process for employees to report outside activities, such as employment or speaking engagements, other than activities for which employees receive income in annual financial disclosure forms.⁴² In addition, NMB does not systematically track or monitor when such activities have been approved for an employee by a manager or board member. Without such controls, employees may engage in inappropriate outside activities, which may violate ethical standards.

⁴⁰ United States Sentencing Commission, *Guidelines Manual*, Chap.8 (November 2016). Although the guidelines manual provides guidelines and policy statements for sentencing courts to use when sentencing offenders convicted of federal crimes, they also outline seven elements of an effective compliance and ethics program that may mitigate the punishment of an organization. The guidelines have provided a key source of guidance influencing the development of ethics programs. For example, see [GAO-15-711](#), *Military Personnel: Additional Steps Are Needed to Strengthen DOD's Oversight of Ethics and Professionalism Issues* (Washington, D.C.: Sept. 3, 2015).

⁴¹ [GAO-15-704G](#).

⁴² For example, OGE Form 450 includes a requirement for executive branch employees to annually report all sources of salary, fees, commissions, and other earned income greater than \$200.

Surveyed NMB Employees Expressed Concerns about Promotions, Leadership, and Other Issues

Surveyed NMB employees expressed concerns about promotions, training, leadership, and fear of reprisal at the agency. The 2017 Federal Employee Viewpoint Survey⁴³ was sent to all 34 eligible employees⁴⁴ at NMB, and 20 employees responded, but not necessarily to all survey questions. The results of the survey are not generalizable to all NMB employees, but do provide insights into areas of concern. Specifically, we identified 22 out of 71 statements where more than 30 percent of employees who responded answered “disagree” or “strongly disagree” as potential areas of concern.

Promotions: NMB employees expressed concerns with promotions at NMB. Specifically, 11 of 19 employees disagreed with the statement “Pay raises depend on how well employees perform their jobs.” Nearly half (8 of 19) of NMB employees who responded to a survey question about the equity of promotions expressed concern that promotions may not be based on merit.

Resources and Training: About half (9 of 20) of NMB employees who responded to a survey question about resources expressed concern that they did not have sufficient resources to do their jobs, and nearly half (8 of 20) were not satisfied with the training they received.

Leadership: About one-third (7 of 20) of NMB’s employees who responded to a survey question about agency leadership had a negative view of the policies and practices of senior management, and 8 of 20 expressed dissatisfaction with the information they receive from management.

Fear of Reprisal: About one-third (7 of 20) of NMB’s employees who responded to a survey question about retaliation indicated that they did not feel they could report violations without fearing reprisal. An official

⁴³ OPM has been administering the Federal Employee Viewpoint Survey annually since 2010. In 2017, more than 485,000 employees across 80 agencies responded to the survey. Full-time and part-time permanent, nonseasonal employees were eligible to participate in the self-administered Web survey.

⁴⁴ Eligible employees include both full- and part-time permanent, nonpolitical employees who were in pay status as of the end of October of the previous year.

with the NMB employee union told us that employees have anonymously or directly expressed a fear of retaliation from supervisors, and are reluctant to report issues to the union.

Research on both private- and public-sector organizations has found that increased levels of engagement—generally defined as the sense of purpose and commitment employees feel toward their employer and its mission—can lead to better organizational performance.⁴⁵ Employee engagement is particularly important within federal agencies, where employees influence the well-being and safety of the public in myriad ways.

Although NMB's strategic plan states that an internal climate assessment was to be conducted by the end of calendar year 2015 and every 3 years thereafter, NMB officials told us they have not conducted such an assessment and said that OPM had recently conducted a human capital assessment at NMB. OPM officials told us that the employees' responses to the Federal Employee Viewpoint Survey indicate that there might be an underlying issue, but that this was not reflected in employee interviews, possibly due to fear of reprisal. The strategic plan also says that the agency will identify areas for improvement based on Federal Employee Viewpoint Survey results. However, officials said they have not taken actions in response to survey results because they believe the negative responses were attributable to a few employees. Without such an assessment, NMB employees may be less engaged, leading to absenteeism or turnover.

NMB Hiring Decisions Raise Questions

In addition to the concerns expressed by employees, our review found concerns with hiring and promotions at NMB. OPM maintains a personnel management oversight program to ensure that agencies' hiring actions comply with merit system principles and statutes and regulations governing the appointment. OPM's hiring handbook states that applicants who do not meet qualification requirements may not be considered. OPM also has an agreement with NMB to recruit and provide a list of qualified applicants for vacant positions.

⁴⁵ Office of Personnel Management, *2014 Federal Employee Viewpoint Survey Results: Employees Influencing Change: Government-wide Management Report* (Washington, D.C.: 2014).

Our review identified two NMB employees appointed to new positions for which they were deemed unqualified by OPM. After receiving OPM's decision, the former NMB Chief of Staff requested that the Department of Interior (NMB's human capital service provider) evaluate the candidates and appoint them to the positions. Interior officials told us that in conducting this evaluation, they reviewed the resumes and job descriptions, but they did not reach out to OPM regarding the previous decisions. They stated that they did not have any concerns about deeming the individuals qualified. Accordingly, the employees were subsequently appointed to the positions.

In addition, for one of the positions, Interior created the position description after receiving the applicant's resume. OPM's hiring guidance⁴⁶ clearly stipulates an agency must conduct a job analysis and create the job description before reviewing applications. Agencies are prohibited from granting an individual an advantage not authorized in law in the application process, such as defining the requirements for a position to improve the prospects of any particular applicant.⁴⁷

NMB's Travel and Telework Policies Are Inconsistent with Federal Requirements and Are Not Consistently Enforced

NMB's travel and telework policies are, in some respects, inconsistent with federal laws and regulations,⁴⁸ and the policies are not consistently enforced. As a result, the agency could be at risk for waste or mismanagement.

Travel. The Federal Travel Regulation (FTR) issued by the General Services Administration enumerates the travel and relocation policy for all executive branch agency employees who travel on official government business. The FTR states that federal employees should use their government credit card unless it is impractical—for example, a vendor

⁴⁶ Office of Personnel Management, *Delegated Examining Operations Handbook: A Guide for Federal Agency Examining Offices*.

⁴⁷ 5 U.S.C. § 2302(b)(6).

⁴⁸ See Telework Enhancement Act of 2010, Pub. L. No. 111-292, 124 Stat. 3165 (codified at 5 U.S.C. ch. 65) (providing guidance regarding telework); Federal Travel Regulation, 41 C.F.R. chapters 300-304 (implementing statutory requirements and executive branch policies for travel by federal civilian employees and others authorized to travel at government expense).

does not accept credit cards, or an alternative payment method is necessary in the interest of the agency.

In contrast, NMB's travel policy states that "decisions to use cash or debit cards instead of the government credit card should be made by the traveler based on the situation," which may not be in the interest of the agency. The policy also states that "an explanatory line on the travel voucher will serve as a justification for using payment methods other than the travel card." Additionally, we identified at least one NMB employee who had permission to use his personal credit card on an ongoing basis for official travel.

NMB management has also granted NMB staff exceptions to the agency travel policy and the FTR. Generally, the FTR requires an employee to have authorization prior to incurring any travel expense, unless it is not practicable or possible. Prior authorization is always required for travel expenses related to attendance at a conference.⁴⁹ However, NMB management has approved travel expenses after the fact rather than before travel, including for expenses related to an employee's attendance at a conference. The FTR also requires employees to rent the least expensive compact car available, unless an exception for another class of vehicle is approved in advance, and generally prohibits them from purchasing pre-paid refueling options.⁵⁰ Management has also made exceptions after travel has been completed that allowed the use of a luxury rental car and the pre-paid refueling option.

The person who approved the exceptions is no longer with the agency. Nevertheless, without greater oversight of employee travel expenses, NMB may be incurring needless additional expenses for employee travel.

Telework. The Telework Enhancement Act of 2010 requires, among other things, that federal agencies (1) provide telework training to each employee eligible to participate in telework,⁵¹ (2) ensure that the employee has completed the training before entering into a written telework agreement, and (3) require that the employee enter into a written

⁴⁹ 41 C.F.R. § 301-2.1.

⁵⁰ 41 C.F.R. § 301-10.450(c), (d). Agencies should approve these exceptions on a limited basis and must indicate on the travel authorization the reason for the exception.

⁵¹ 5 U.S.C. § 6503(a)(2).

telework agreement with an agency manager prior to teleworking.⁵² In addition, OPM is required to submit an annual report that includes the number of employees who telework at each executive agency and how often they do so, and surveys executive agencies with an annual data call to help fulfill this requirement.⁵³ Telework training and documented telework agreements helps agencies ensure employees understand agency telework policies and that employee telework agreements meet agency business needs.

NMB's telework program is not consistent with the requirements of the Telework Enhancement Act of 2010, and is also not consistently enforced. NMB's telework policy, effective October 2015, does not mention employee telework training and management did not require employees to complete training before entering into a telework agreement, as required by federal law. In addition, management has allowed employees to telework without a written telework agreement, even though this requirement is specified in NMB's telework policy.

A key element of a strong internal control system includes ongoing monitoring of the system as a part of the normal course of operations. GAO's internal control standards⁵⁴ state that management retains responsibility for monitoring the effectiveness of controls, and should use ongoing monitoring, separate evaluations, or a combination of the two to obtain reasonable assurance that the controls are effective. Tracking when exceptions are approved for travel and telework policies would help ensure that NMB policies are being applied fairly across the agency and ensure compliance with federal regulations.

Lack of an IG Leaves NMB Vulnerable to Potential Mismanagement, Fraud, Waste, and Abuse

Our biennial reviews of NMB have identified a number of management challenges, yet there is no IG to conduct ongoing reviews of NMB's operations to identify issues or respond to employee concerns as they surface. IGs are responsible for conducting audits and investigations relating to agency programs and operations, and recommend policies and

⁵² 5 U.S.C. § 6502(b)(2).

⁵³ 5 U.S.C. § 6506(b). *See also*, GAO-17-247.

⁵⁴ [GAO-14-704G](#).

conduct other activities to promote economy, efficiency, and effectiveness and prevent and detect fraud and abuse. IG offices play a key role in federal agency oversight by enhancing government accountability and protecting the government's resources. This includes a strong leadership role in recommending improvements to the effectiveness and efficiency of government offices and programs at a time when they are needed most. Importantly, IGs also keep the agency head and the Congress fully and currently informed about problems and deficiencies relating to the administration of agency programs and operations.

We previously recommended in 2013 that Congress consider authorizing an appropriate federal agency's Office of Inspector General to provide such oversight. There are a number of examples where IGs in federal departments and agencies with relatively large budgets currently provide oversight of federal entities with relatively small budgets. To illustrate, the Department of State IG has oversight authority for the Broadcasting Board of Governors.⁵⁵ NMB officials recently established an agreement with the National Labor Relations Board (NLRB) IG to operate a hotline for employees to report issues. The NLRB IG said that it will operate the hotline from its own resources, since the cost would be minimal. NMB officials stated that the NLRB IG seemed like a logical choice, since the two agencies have similar missions and have worked together in the past.⁵⁶

NMB officials also told us that they are considering establishing additional agreements with the NLRB IG to conduct further investigative work, such as issues identified from the employee hotline and our investigation of a former manager. The NLRB IG stated the agency would have to enter into a formal Memorandum of Understanding with NMB to conduct investigative work. Because this work would be conducted on a reimbursable basis, the NLRB IG stated that NMB would have to request authority from OMB. While these actions are helpful, we continue to

⁵⁵ United States International Broadcasting Act of 1994, Pub. L. No. 103-236, tit.III, § 310A, 108 Stat. 432 (1994), as added by National Defense Authorization Act for Fiscal Year 2017, div. A, § 1288(7), 130 Stat. 2000, 2553 (2016) (codified as amended at 22 U.S.C. § 6209a). A similar provision was previously located in section 304(a)(3) of the United States International Broadcasting Act of 1994, 22 U.S.C. § 6203(a)(3).

⁵⁶ The NLRB is an independent federal agency enforcing the National Labor Relations Act, which guarantees the right of most private sector employees to organize, to engage in group efforts to improve their wages and working conditions, to determine whether to have unions as their bargaining representative, to engage in collective bargaining, and to refrain from any of these activities.

believe that Congress should consider authorizing an appropriate federal agency's Office of Inspector General to provide oversight for NMB.⁵⁷

Ongoing, regular oversight by a cognizant IG could help assure that NMB policies comply with federal regulations, and that exceptions to policies are appropriate, properly documented, and tracked. This could, for instance, include reviewing exceptions granted to agency-wide telework and travel policies to ensure compliance. An IG would also allow employees an ongoing means to report issues of concern without fearing reprisal, and ensure that employee concerns are addressed timely. For example, this could provide employees an opportunity to report concerns over agency hiring practices and therefore minimize the declines in employee morale and engagement.

Conclusions

NMB has implemented most of our prior recommendations from our past reviews; however, the agency still needs to take action to implement recommendations concerning information security, information privacy, and its rail arbitration workload. Without fully implementing these recommendations, NMB is missing opportunities to improve performance and mitigate risks. In addition, although the agency has taken some steps to address an increase in the number of rail arbitration cases, NMB does not have a plan to address its growing backlog. Additionally, NMB lacks controls to ensure that employee requests to engage in outside employment and activities are approved and tracked to prevent violations of ethics rules including standards of conduct. As a result, NMB cannot ensure that its employees are complying with ethics requirements. Further, while employees have expressed concerns in several areas on an annual survey, NMB has not fulfilled its commitment to conducting a climate assessment or taking actions based on survey results. NMB also lacks appropriate internal controls to ensure that travel and telework policies are consistently applied and enforced.

⁵⁷ [GAO-14-5](#). Additionally, in a 2014 testimony, we noted concerns about creating and maintaining IG offices in smaller federal agencies where it may not be cost-effective to obtain the skills and expertise necessary to provide adequate oversight. However, we also observed that specific small agencies, on a case-by-case basis, could benefit by obtaining IG oversight from another agency's IG office where the missions of the two agencies are somewhat similar. GAO, *Inspectors General: Oversight of Small Federal Agencies and the Role of the Inspectors General*, [GAO-14-503T](#) (Washington, D.C.: Apr. 10, 2014).

As our work continues to demonstrate, NMB faces management challenges that could be partly addressed by ongoing, regular oversight by an IG. While NMB has arranged for some oversight by the NLRB IG, such limited assistance cannot provide the type of ongoing, regular oversight needed to identify and help NMB to address issues in a timely manner. As such, we continue to believe that Congress should consider authorizing an appropriate federal agency's IG to provide oversight for NMB.

Recommendations for Executive Action

We recommend that the Chairman of the National Mediation Board take the following five actions:

1. Develop and execute a plan to address the rail arbitration case backlog. (Recommendation 1)
2. 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. (Recommendation 2)
3. Complete and take actions on the organizational climate assessment and survey results as a means to address employee concerns. (Recommendation 3)
4. Revise NMB's travel policy and develop appropriate internal controls to ensure compliance with federal requirements for travel. (Recommendation 4)
5. Revise NMB's telework policy and develop appropriate internal controls to ensure compliance with federal requirements for telework. (Recommendation 5)

Agency Comments and Our Evaluation

We provided a draft of this report to the National Mediation Board (NMB) for comment. The agency provided written comments, which are reproduced in their entirety in appendix III. NMB agreed with our recommendations, and stated that it recognizes that additional actions and controls are needed to address certain management challenges. The following highlights NMB's response to our recommendations.

Recommendation 1: NMB stated that it is examining the growing arbitration backlog and investigating steps the Board may take to reduce it. In particular, NMB stated that it is discussing proposals with stakeholders and formulating a plan to reduce the backlog in 2018.

Recommendation 2: NMB stated that it is concerned about GAO's investigative findings of potential conflicts of interest activities involving a former manager. NMB stated that it has taken significant steps to investigate this matter and has established new controls in order to prevent this type of activity in the future, including establishing a relationship with the IG of the National Labor Relations Board to operate a telephone hotline and email address for the reporting of suspected fraud, waste and abuse at NMB.

Recommendation 3: NMB stated that the Board is concerned that the 2017 Federal Employee Viewpoint Survey revealed a level of dissatisfaction among NMB employees. NMB stated that it plans to conduct an Internal Climate Assessment in 2018, and looks forward to the opportunity to better understand and address any employee concerns.

Recommendation 4: NMB stated that it is in the process of reviewing the current travel policy, and will revise the policy to be in compliance with federal travel regulations as necessary.

Recommendation 5: NMB stated that it will revise NMB's telework policy and strengthen internal controls, as necessary.

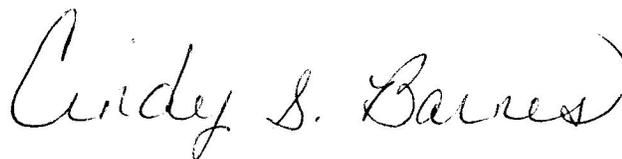
NMB also said that it is taking actions to fully implement the remaining recommendations from our 2013 and 2016 reports.

- For our recommendation on collecting and analyzing data on the types of grievances filed for rail arbitration cases, NMB stated that it has authorized a plan to designate all existing and new cases filed with the National Rail Adjustment Board by March 2018.
- For our recommendation on information security, NMB stated that it will continue to improve its cyber-security practices and has added extending coverage to third party provider applications to its security plan. NMB also stated that it would re-write the NMB Enterprise Cloud Information System Security Plan to address required updates with a planned completion in April of 2018.

-
- For our recommendation on information privacy, NMB stated that it will perform privacy impact assessments as part of the new Information System Security Plan by April 2018.

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

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

A handwritten signature in cursive script that reads "Cindy S. Barnes". The signature is written in black ink and is positioned above the printed name and title.

Cindy S. Brown Barnes
Director
Education, Workforce, and Income Security

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

Table 3: GAO Comparison of Key National Mediation Board (NMB) Documents with Federal Laws, Guidance, and Leading Practices

Management area	Key NMB documents reviewed	Federal laws and guidance and previous GAO work
Strategic plan	National Mediation Board Strategic Plan, Fiscal Year 2014 - Fiscal Year 2019 As Amended, Fiscal Year 2017	GPRAMA Modernization Act of 2010 (GPRAMA) ^a Office of Management and Budget (OMB) Circular No. A-11, Part 6 (July 2016) ^b Standards for Internal Control in the Federal Government ^c
Performance goals	National Mediation Board Strategic Plan, Fiscal Year 2014 - Fiscal Year 2019 As Amended, Fiscal Year 2017 Fiscal Year 2017 Congressional Budget Submission	GPRAMA ^a OMB's Circular No. A-11, Part 6 (July 2016) ^b GAO prior work on performance measurement ^d
Workforce Plan	National Mediation Board Workforce and Succession Plan October 2014 National Mediation Board Strategic Plan, Fiscal Year 2014 - Fiscal Year 2019 As Amended, Fiscal Year 2017	GAO prior work on workforce planning ^e
Audit findings and recommendations	National Mediation Board Policy #5100 Audit Coordination and Follow-up Fiscal Year 2015, and 2016 Final Independent Auditors' Reports	OMB's Circular No. A-123 (July 15, 2016) ^f OMB's Circular No. A-50 Revised (September 29, 1982) ^g Standards for Internal Control in the Federal Government ^c
Procurement	National Mediation Board Policy #5150 Purchase Card Manual (October 5, 2017) National Mediation Board Policy #5200 Procurement Operating Manual (October 5, 2017) Interagency Agreement Between Department of the Treasury Bureau of the Fiscal Service and National Mediation Board (Fiscal Year 2017)	GAO's Framework for Assessing the Acquisition Function at Federal Agencies ^h Federal Acquisition Regulation ⁱ Standards for Internal Control in the Federal Government ^c

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

Management area	Key NMB documents reviewed	Federal laws and guidance and previous GAO work
Information security and privacy	<p>NMB Information Program Plan (April 15, 2016)</p> <p>NMB 2017 Information System Risk Assessment (October 17, 2017)</p> <p>System Security Plan National Mediation Board Enterprise Cloud (March 16, 2016)</p> <p>Security Assessment and Authorization Package for Enterprise Cloud (May 9, 2016)</p> <p>Information Technology Security Education, Awareness and Training Standard and Implementation Guidelines (April 15, 2016)</p> <p>FY 2017 Information Technology Training Plan (April 6, 2017)</p> <p>Security Awareness Training Certificates and Sign-in Sheets (2017)</p> <p>NMB emails and checklists related to security awareness training completion</p> <p>Plan of Actions and Milestones (September 1, 2017)</p> <p>National Mediation Board Policy #6450 Continuity of Operations (COOP) Plan (March 3, 2016)</p> <p>NMB Enterprise Cloud Standard Operating Procedures for Admin (June 7, 2016)</p> <p>NMB emails related to cyber incidents and protection of personally identifiable information</p> <p>National Mediation Board Policy #8200 Privacy Policy (October 5, 2017)</p> <p>2017 Security Assessment for the National Mediation Board Enterprise Cloud (November 6, 2017)</p>	<p>Federal Information Security Modernization Act of 2014 (FISMA)^j</p> <p>The Privacy Act of 1974 (As Amended)^k</p> <p>E-Government Act of 2002^l</p> <p>National Institute of Standards and Technology, SP 800-53 Revision 4, Security and Privacy Controls for Federal Information Systems and Organizations^m</p> <p>OMB Memos M-14-04, OMB M-04-25, and OMB M-16-24ⁿ</p>
Rail Grievance Arbitration	<p>NMB's rail grievance arbitration data for fiscal years 2011 - 2017</p> <p>NMB's arbitrator caseload reports, and arbitration case types</p>	<p>Standards for Internal Control in the Federal Government^c</p> <p>GAO prior work on performance measurement^d</p>
Telework	<p>National Mediation Board Policy #2001 Telecommuting</p> <p>Email correspondences relating to telework</p>	<p>Telework Enhancement Act of 2010^o</p>
Travel	<p>National Mediation Board Policy #7000 Travel Policy</p> <p>Contractor Travel Reimbursement Guidelines</p> <p>Memos and email correspondences relating to travel</p>	<p>Federal travel regulation found at 41 C.F.R. § 300-304</p>

Source: GAO analysis of NMB and other agencies documents. | GAO-18-301

^aGPRA stands for the Government Performance and Results Act, Pub. L. No. 111-352, 124 Stat. 3866 (2011).

^bOffice of Management and Budget, Preparation and Submission of Strategic Plans, Annual Performance Plans, Performance Reviews, and Annual Performance Reports, Circular No. A-11, Part 6 (July 2016).

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

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

^dGAO, *Managing for Results: Measuring Program Results that Are Under Limited Federal Control*, [GAO/IGD-99-16](#) (Washington, D.C.: Dec. 11, 1998).

^eGAO, *Human Capital: Key Principles for Effective Strategic Workforce Planning*, [GAO-04-39](#) (Washington, D.C.: Dec. 11, 2003).

^fOffice of Management and Budget, *Management's Responsibility for Enterprise Risk Management and Internal Control*, Circular A-123 (Revised July 15, 2016).

^gOffice of Management and Budget, *Audit Follow Up*, Circular No. A-50 Revised (September 29, 1982).

^hGAO, *Framework for Assessing the Acquisition Function at Federal Agencies*, [GAO-05-218G](#) (Washington, D.C.: September 2005).

ⁱ*Federal Acquisition Regulation*, <https://www.acquisition.gov/>.

^jInformation security program and evaluation requirements for federal agencies were established by the Federal Information Security Management Act of 2002 (FISMA 2002). FISMA 2002 was largely superseded by the Federal Information Security Modernization Act of 2014 (FISMA 2014). 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.

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

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

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

ⁿOffice of Management and Budget, *Memo OMB M-04-25, FY 2004 Reporting Instructions for the Federal Information Security Management Act; M-14-04, Fiscal Year 2013 Reporting Instructions for the Federal Information Security Management Act and Agency Privacy Management; and OMB M-16-24, Role and Designation of Senior Agency Officials for Privacy*.

^oTelework 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).

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

Table 4: Extent to Which the National Mediation Board (NMB) Is Following Key Practices for Information Security and Privacy

Practice	Extent NMB is following ^a	Example of NMB's current status
Conduct periodic risk assessments that consider cyber threats and vulnerabilities.	Partially following	NMB had the Department of the Treasury's Bureau of the Fiscal Service conduct a security assessment of the agency's enterprise network ^c ending in May 9, 2016. In addition, the agency's chief information security officer documented a security assessment of the network signed November 6, 2017. However, NMB has not completed assessments for its other systems. NMB also completed an information system risk assessment dated October 2017 that identifies and describes threats. The agency noted the scope of the assessment did not include the Office of Administration processes that use information systems provided and administered by other agencies.
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 through its Information Program Plan dated April 15, 2016, that includes risk assessment requirements. However, NMB has not developed agency-wide policies and procedures on the oversight of its third-party providers, including third-party personnel security.
Develop system security plans that cover networks, facilities, and systems or groups of systems, as appropriate.	Partially following	NMB has developed, documented, and approved a system security plan for its enterprise network dated March 16, 2016, and last reviewed the plan on January 10, 2018. However, the plan did not always include implementation details spanning operational controls and a rationale on why controls were not applicable as recommended by the National Institute of Standards and Technology guidance. In addition, NMB drafted system security plans for other systems, but these plans have not been completed. NMB officials stated that the agency plans to complete security plans for systems that are not obsolete when the agency updates the plan for the enterprise network in July 2018.
Provide security awareness training for agency employees and contractors.	Partially following	NMB required that employees complete the Department of Defense cybersecurity awareness challenge by September 29, 2017, and monitored the completion of this training through a checklist of individual names and collection of training completion certificates. Of the 38 individuals monitored, 6 did not provide evidence of completing the training by the September 29, 2017, deadline. Of the 6 individuals, 4 completed the training and the agency reported 1 as being retired as of October 17, 2017. NMB also offered security awareness training for its enterprise network and collected sign-in sheets to record training completion. However, the agency did not have an adequate tracking mechanism in place to ensure all of its employees completed the training for its enterprise network.

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

Practice	Extent NMB is following^a	Example of NMB's current status
Conduct periodic management testing and evaluation of all major systems at least annually.	Partially following	NMB last had its enterprise network independently tested by the Department of the Treasury's Bureau of the Fiscal Service Division of Security Services in May 2016. In addition, the agency's chief information security officer documented a security assessment for the network signed November 6, 2017. However, the agency did not provide documentation illustrating that it tested the network and its other systems in 2017, and stated it did not assess third-party providers' implementation of security requirements.
Establish a remedial action process to address identified information security control weaknesses.	Partially following	NMB has documented a remedial action process and plan of actions for its enterprise network. However, the plan of actions as of September 1, 2017, did not fully meet the Office of Management and Budget (OMB) requirements to include clearly identified points of contact, weaknesses, and changes to milestones. In addition, NMB's plan of actions did not include the agency's weakness of not having privacy impact assessments. Further, NMB's plans of action included past due dates, and NMB did not provide updated completion dates.
Establish security-incident procedures for detecting, reporting, and responding to incidents.	Partially following	NMB developed a standard operating procedure dated June 2016 that spans handling cyber incidents. However, the procedure did not include required actions specified by the Federal Information Security Modernization Act of 2014, such as notifying and consulting with the federal information security incident center, notifying law enforcement agencies, and relevant offices of Inspector General and General Counsel.
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 in March 2016. However, the agency has not documented contingency plans for its systems. NMB explained that the agency's enterprise cloud does not depend on any of the agency's hardware or physical assets. Therefore, NMB officials stated that as long as the cloud service provider product and the Internet are functioning, the agency does not need a contingency plan. However, the agency plans to have a contingency plan for its enterprise cloud in October 2018 to explore different scenarios.
Assign agency official for privacy	Following	NMB designated its privacy officer through its Information Program Plan dated April 15, 2016. The agency stated that either the privacy officer or the Chief of Staff can be considered the senior official with overall agency-wide responsibility for information privacy issues.
Establish policies and procedures for privacy protections	Following	NMB established an October 5, 2017, privacy policy that contains procedures for protecting sensitive information, including personally identifiable information.
Conduct privacy impact assessments for systems containing personally identifiable information. ^e	Minimally following	NMB has not conducted privacy impact assessments for its systems and those of third-party providers containing the agency's personally identifiable information.
Issue system of records notice. ^f	Minimally following	NMB did not issue any system of records notices for any of its systems.

Source: GAO analysis of NMB documents and interviews with NMB officials. | GAO-18-301

^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.

^bWe identified key information security practices from the Federal Information Security Modernization Act of 2014; NIST Special Publication 800-53 Revision 4 Security and Privacy Controls for Federal Information Systems and Organizations, April 2013; and OMB guidance.

^cThe enterprise network stands for National Mediation Board's Enterprise Cloud (NMBEC) system.

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

^dWe identified key privacy practices from the Privacy Act of 1974, the E-Government Act of 2002, OMB guidance, and the National Institute of Standards and Technology Special Publication 800-53, Revision 4.

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

^fA 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.

Appendix III: Comments from the National Mediation Board



NATIONAL MEDIATION BOARD

WASHINGTON, DC 20572

COMMENTS FROM THE NATIONAL MEDIATION BOARD

March 2, 2018

This document is provided as a formal response by the National Mediation Board (NMB) to the Government Accountability Office (GAO) report GAO-18-301, *National Mediation Board: Progress Made on GAO Recommendations. But Actions Needed to Address Management Challenges*, dated March 2018.

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 is pleased with the progress that NMB has made in many areas, which are highlighted in the GAO report. As GAO's report notes, NMB has implemented the majority of the GAO recommendations made in 2013 and 2016. Some of these GAO-cited NMB accomplishments include:

- NMB developed a formalized process to define responsibilities, assign key roles, and delegate authority to staff in its strategic plan;
- NMB has implemented an annual planning process for reviewing and updating its strategic plan;
- NMB developed a workforce policy that includes a performance management process to monitor and evaluate its staff that is consistent with federal internal control standards;
- NMB's audit standard operating procedures now outline the agency process for promptly resolving financial and non-financial audit findings, and those procedures are consistent with federal internal control standards; and
- NMB finalized a procurement operation manual in October 2017 that includes processes for its inter-agency agreement with the Bureau of the Fiscal Service, and has procurement processes in place that are consistent with federal internal control standards and best practices.

1

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.

It should be noted that, early in November, 2017, a new NMB Board (Gerald W. Fauth III, Kyle Fortson and Linda Puchala) was sworn in replacing the previous NMB Board (Harry Hoglander and Linda Puchala, who was reappointed). On November 16, 2017, the new Board was provided GAO's Statement of Facts in an Exit Conference (GAO Engagement 101650) attended by the Board Members, Board staff and GAO representatives.

At that November meeting, the Board Members learned the details of an existing GAO investigation into certain questionable outside activities of an individual who was a former NMB employee and manager. As indicated herein, since first learning of these issues in November, the Board has taken significant actions and instituted strong new controls in response to GAO's investigation and findings.

Recommendation 1 - Develop and execute a plan to address the rail arbitration backlog.

NMB is very concerned about the growing arbitration case backlog. The Board is thoroughly examining the problem and investigating steps the Board may take to reduce it. NMB is discussing proposals with stakeholders and formulating a plan to reduce the backlog this year.

The Board has undertaken steps to correct for the inability to track and classify the type of grievances filed for arbitration with the National Railroad Adjustment Board (NRAB). Grievances filed with a Public Law Board (PLB) and a Special Board of Adjustment (SBA) are designated by subject codes that allow the NMB to understand the subject of the grievance. As GAO has noted since 2013, NRAB grievances are not currently designated by subject codes. The Board has authorized a plan to designate all existing and new cases filed with NRAB by March 2018. This information will be useful as we consider options such as prioritizing some types of grievances or consolidating grievances.

Additionally, the Board will continue the practice of encouraging parties to utilize grievance mediation. As GAO has noted, this effort has resulted in a significant reduction in arbitration cases. It has also been well-received by parties. NMB plans to continue this backlog-reduction method, in addition to any new efforts we may undertake.

Recommendation 2 – Develop and implement policies for approval and monitoring of employee requests for outside employment to prevent violations of ethics rules, consistent with Office of Government Ethics standards of conduct and federal internal control standards.

GAO found that NMB's lack of controls "may have permitted a former manager to represent himself as a government employee while conducting business for his private companies," even though "federal employees may not use their public office for private gain." The Board is very concerned by these GAO investigation findings of potential conflicts of interest activities involving this former manager.

NMB has taken significant steps to investigate this matter and has established new controls in order to prevent this type of activity in the future. After being informed of these issues by GAO, the Board immediately began an internal investigation of the matter. The new Board has acted quickly to ensure any past violations are properly addressed by authorities and raise ethical standards and controls at NMB by establishing oversight and adopting a supplemental ethics regulation requiring prior approval for outside activities.

The current NMB Chairman contacted and entered into a Memorandum of Understanding (MOU) agreement with the Inspector General (IG) of the National Labor Relations Board (NLRB) to act as a liaison with the GAO in order to thoroughly understand and address the GAO findings.

In January 2018, GAO presented additional and more detailed findings concerning this investigation. Subsequently, the NLRB IG, in consultation with GAO and the NMB Chairman, notified the appropriate investigative authorities for purposes of further action and investigation.

The Board has also entered into a separate MOU with the NLRB IG to create a mechanism for reporting suspected fraud, waste and abuse at the NMB. NMB and the NLRB IG have created an email and telephone hotline, which the NLRB IG will monitor. All NMB employees have been informed of the hotline, which is also featured on the NMB website homepage. Depending upon the nature of the allegation, the NLRB IG will refer information received to the NMB Chairman, Board Member, an appropriate law enforcement agency, or an appropriate government office. It is our hope that this formal relationship with the NLRB IG will add a beneficial layer of oversight and strengthen adherence to ethical standards at NMB.

The Board places a high priority on adherence to ethical standards. NMB has a Designated Agency Ethics Official (DAEO) and an Alternate DAEO. NMB's ethics officials provide annual mandatory briefings on ethical standards, including outside employment prohibitions, and provide opinions on outside activities in which our employees may wish to engage. The majority of NMB employees are required to file either OGE ethics forms 450 or 278, which require the reporting of outside employment and income.

NMB's DAEO tracks and retains all outside activity request approvals, and on January 18, 2018, circulated a memorandum reminding employees of examples of outside activities. It should also be noted that OGE audited NMB's Ethics Program in 2017 and found no deficiencies.

GAO is correct that no standard form for outside activity approval exists. GAO is also correct that a list of potential activities for which an employee must obtain prior approval has not been created. Therefore, the Board has taken action to remedy these deficiencies.

NMB contacted OGE and has been advised that in order to create these additional safeguards, NMB must first adopt a supplemental ethics regulation. Consequently, the Board drafted a supplemental ethics regulation requiring prior approval for outside employment and submitted this draft regulation to OGE on February 21, 2018. With OGE approval, the new regulation can be published in the Federal Register as an interim final regulation and become effective immediately. OGE has included the NMB's proposed supplemental ethics regulation in their submission to the Office of Management and Budget (OMB) for the spring unified regulatory agenda. After the supplemental ethics regulation becomes effective, the Board will adopt new ethics policies regarding outside activities, as recommended by GAO.

Recommendation 3 – Complete and take action on the organizational climate assessment and survey results as a means to address employee concerns.

The Board is concerned that the 2017 Federal Employee Viewpoint Survey revealed a level of dissatisfaction among NMB employees. Although the survey responses cited by GAO represent one quarter of the NMB workforce or less, the expression of these concerns is a matter that the Board takes very seriously.

NMB plans to conduct an Internal Climate Assessment in 2018. The Board looks forward to the opportunity to better understand and address any employee concerns. The Board understands that the ability to perform NMB's statutory mission depends on its employees, and we hold a strong commitment to making the NMB a fair, satisfying and safe place to work.

The NMB has an established ombudsman program, which has been in place since 2004. The NMB ombudsmen act as impartial third-parties. The Board has designated two employees to serve as ombudsmen, who periodically receive individual grievances from NMB employees or contractors regarding actions of NMB managers or other employees.

This ombudsman program has received varied numbers of complaints throughout the years. In 2016, two complaints were lodged by NMB employees. In 2017, four complaints were lodged by NMB employees.

GAO cites two incidents of employee promotion or reassignment, which did not adhere to OPM's hiring guidance and appropriate federal protocols. The Board is conducting a review of these two incidents and is aware of the manner in which they were conducted. The Board will determine any necessary corrective actions. We commit to fully comply with all OPM protocols in the future.

Recommendation 4 – Revise NMB's travel policy and develop appropriate internal controls to ensure compliance with federal requirements for travel.

GAO has identified the need to revise the NMB travel policy. The Board is in the process of reviewing the current travel policy. Any identified areas of non-compliance with federal travel regulations in the policy will be revised to be in compliance with federal travel regulations.

The Board notes that the current federal travel regulations allow exceptions for many of the incidents identified by the GAO and NMB investigations. However, to the extent that exceptions made by former NMB officials were not appropriately considered, we advise that the Board will take steps to ensure that all current and future travel exceptions will follow federal guidelines and are fairly applied.

Recommendation 5 – Revise NMB's telework policy and develop appropriate internal controls to ensure compliance with federal requirements for telework.

The Board will revise NMB's telework policy and strengthen internal controls, as necessary. The Board has learned that one former employee, who was with the NMB for only four months in 2017, did not participate in telework training and did not have a written and signed telework agreement before engaging in telework.

The Board notes that all telework-qualified NMB employees did participate in telework training in 2017, with the exception noted above and two former managers, who also left the NMB in 2017. All current NMB employees qualified for telework or involved in the management of teleworking employees have participated in telework training. Going forward, the NMB will ensure telework-qualified employees participate in telework training and track any exceptions granted to the telework policy.

**Comments on Additional Actions Needed in Response to GAO's 2013 and 2016
Recommendations Not Fully Implemented:**

**Develop and Fully Implement Information Security Program Assessing Third
Party Providers.**

NMB will continue to improve our cyber-security practices and have added extending coverage to the 3rd party provider applications from the Bureau of Financial Services (BFS) and the Department of Interior (DOI) to our Plan of Action and Milestone (POAM) list for 2018. NMB will re-write our NMB Enterprise Cloud (NMBEC) Information System Security Plan (ISSP) to address required upgrades with a planned completion in April of 2018.

**Conduct Privacy Assessment on Personally Identifiable Information NMB uses
and shares.**

NMB acknowledges the limited progress on privacy controls per NIST SP 800-53 rev-4 and have had a POAM recognizing it since June, 2016. NMB will perform privacy impact assessments as part of the new ISSP by April 2018.

Respectfully submitted by:



Gerald W. Fauth, Chairman
National Mediation Board



Kyle Fortson, Member
National Mediation Board



Linda Puchala, Member
National Mediation Board

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Cindy Brown Barnes, (202) 512-7215 or brownbarnesc@gao.gov

Staff Acknowledgments

In addition to the contact named above, Mary Crenshaw (Assistant Director), Amy Sweet (Analyst-In-Charge), Chelsa Gurkin (Acting Director), and John Lack made significant contributions to this report. Also contributing to this report were Shirley Abel, Marie Ahearn, Susan Aschoff, Cheryl Bassett, James Bennett, Marcus Corbin, Larry Crosland, Karin Fangman, Robert Graves, Thomas Gilbert, Nisha Hazra, Latoya King, Jason Kirwan, Kendrick Johnson, Robert Letzler, Barbara Lewis, Benjamin Licht, Sheila McCoy, Wayne McElrath, Monica Perez Nelson, Dana Pon, Paula Rascona, James Rebbe, Constance Satchell, Cynthia Saunders, Monica Savoy, Almeta Spencer, Sabrina Streagle, Adam Vodraska, Andrew Von Ah, Shaunyce Wallace, Candice Wright, and Helina Wong.

Appendix V: Accessible Data

Data Tables

Data for Figure 1: Organization of the National Mediation Board

Chairman and members of the board

- Office of Legal Affairs
- Office of the Chief of Staff
 - Office of Administration
 - Office of Mediation and Alternative Dispute Resolution
 - Office of Arbitration Services

Source: National Mediation Board (NMB). | GAO-18-301

Agency Comment Letter

Text of Appendix III: Comments from the National Mediation Board

Page 1

COMMENTS FROM THE NATIONAL MEDIATION BOARD

March 2, 2018

This document is provided as a formal response by the National Mediation Board (NMB) to the Government Accountability Office (GAO) report GAO-18-301, National Mediation Board: Progress Made on GAO Recommendations. But Actions Needed to Address Management Challenges, dated March 2018.

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 is pleased with the progress that NMB has made in many areas, which are highlighted in the GAO report. As GAO's report notes, NMB has implemented the majority of the GAO recommendations made in 2013 and 2016. Some of these GAO- cited NMB accomplishments include:

- NMB developed a formalized process to define responsibilities, assign key roles, and delegate authority to staff in its strategic plan;
- NMB has implemented an annual planning process for reviewing and updating its strategic plan;
- NMB developed a workforce policy that includes a performance management process to monitor and evaluate its staff that is consistent with federal internal control standards;
- NMB's audit standard operating procedures now outline the agency process for promptly resolving financial and non-financial audit findings, and those procedures are consistent with federal internal control standards; and
- NMB finalized a procurement operation manual in October 2017 that includes processes for its inter-agency agreement with the Bureau of the Fiscal Service, and has procurement processes in place that are consistent with federal internal control standards and best practices.

Page 2

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.

It should be noted that, early in November, 2017, a new NMB Board (Gerald W. Fauth III, Kyle Fortson and Linda Puchala) was sworn in replacing the previous NMB Board (Harry Hoglander and Linda Puchala, who was reappointed). On November 16, 2017, the new Board was provided GAO's Statement of Facts in an Exit Conference (GAO Engagement 101650) attended by the Board Members, Board staff and GAO representatives.

At that November meeting, the Board Members learned the details of an existing GAO investigation into certain questionable outside activities of an individual who was a former NMB employee and manager. As

indicated herein, since first learning of these issues in November, the Board has taken significant actions and instituted strong new controls in response to GAO's investigation and findings.

Recommendation 1 - Develop and execute a plan to address the rail arbitration backlog.

NMB is very concerned about the growing arbitration case backlog. The Board is thoroughly examining the problem and investigating steps the Board may take to reduce it. NMB is discussing proposals with stakeholders and formulating a plan to reduce the backlog this year.

The Board has undertaken steps to correct for the inability to track and classify the type of grievances filed for arbitration with the National Railroad Adjustment Board (NRAB). Grievances filed with a Public Law Board (PLB) and a Special Board of Adjustment (SBA) are designated by subject codes that allow the NMB to understand the subject of the grievance. As GAO has noted since 2013, NRAB grievances are not currently designated by subject codes. The Board has authorized a plan to designate all existing and new cases filed with NRAB by March 2018. This information will be useful as we consider options such as prioritizing some types of grievances or consolidating grievances.

Additionally, the Board will continue the practice of encouraging parties to utilize grievance mediation. As GAO has noted, this effort has resulted in a significant reduction in arbitration cases. It has also been well-received by parties. NMB plans to continue this backlog-reduction method, in addition to any new efforts we may undertake.

Page 3

Recommendation 2 – Develop and implement policies for approval and monitoring of employee requests for outside employment to prevent violations of ethics rules, consistent with Office of Government Ethics standards of conduct and federal internal control standards.

GAO found that NMB's lack of controls "may have permitted a former manager to represent himself as a government employee while conducting business for his private companies," even though "federal employees may not use their public office for private gain." The Board is very concerned by these GAO investigation findings of potential conflicts of interest activities involving this former manager.

NMB has taken significant steps to investigate this matter and has established new controls in order to prevent this type of activity in the future. After being informed of these issues by GAO, the Board immediately began an internal investigation of the matter. The new Board has acted quickly to ensure any past violations are properly addressed by authorities and raise ethical standards and controls at NMB by establishing oversight and adopting a supplemental ethics regulation requiring prior approval for outside activities.

The current NMB Chairman contacted and entered into a Memorandum of Understanding (MOU) agreement with the Inspector General (IG) of the National Labor Relations Board (NLRB) to act as a liaison with the GAO in order to thoroughly understand and address the GAO findings.

In January 2018, GAO presented additional and more detailed findings concerning this investigation. Subsequently, the NLRB IG, in consultation with GAO and the NMB Chairman, notified the appropriate investigative authorities for purposes of further action and investigation.

The Board has also entered into a separate MOU with the NLRB IG to create a mechanism for reporting suspected fraud, waste and abuse at the NMB. NMB and the NLRB IG have created an email and telephone hotline, which the NLRB IG will monitor. All NMB employees have been informed of the hotline, which is also featured on the NMB website homepage. Depending upon the nature of the allegation, the NLRB IG will refer information received to the NMB Chairman, Board Member, an appropriate law enforcement agency, or an appropriate government office. It is our hope that this formal relationship with the NLRB IG will add a beneficial layer of oversight and strengthen adherence to ethical standards at NMB.

The Board places a high priority on adherence to ethical standards. NMB has a Designated Agency Ethics Official (DAEO) and an Alternate DAEO. NMB's ethics officials provide annual mandatory briefings on ethical standards, including outside employment prohibitions, and provide opinions on outside activities in which our employees may wish to engage. The majority of NMB employees are required to file either OGE ethics forms 450 or 278, which require the reporting of outside employment and income.

Page 4

NMB's DAEO tracks and retains all outside activity request approvals, and on January 18, 2018, circulated a memorandum reminding employees of examples of outside activities. It should also be noted that OGE audited NMB's Ethics Program in 2017 and found no deficiencies.

GAO is correct that no standard form for outside activity approval exists. GAO is also correct that a list of potential activities for which an employee must obtain prior approval has not been created. Therefore, the Board has taken action to remedy these deficiencies.

NMB contacted OGE and has been advised that in order to create these additional safeguards, NMB must first adopt a supplemental ethics regulation. Consequently, the Board drafted a supplemental ethics regulation requiring prior approval for outside employment and submitted this draft regulation to OGE on February 21, 2018. With OGE approval, the new regulation can be published in the Federal Register as an interim final regulation and become effective immediately. OGE has included the NMB's proposed supplemental ethics regulation in their submission to the Office of Management and Budget (OMB) for the spring unified regulatory agenda. After the supplemental ethics regulation becomes effective, the Board will adopt new ethics policies regarding outside activities, as recommended by GAO.

Recommendation 3 – Complete and take action on the organizational climate assessment and survey results as a means to address employee concerns.

The Board is concerned that the 2017 Federal Employee Viewpoint Survey revealed a level of dissatisfaction among NMB employees. Although the survey responses cited by GAO represent one quarter of the NMB workforce or less, the expression of these concerns is a matter that the Board takes very seriously.

NMB plans to conduct an Internal Climate Assessment in 2018. The Board looks forward to the opportunity to better understand and address any employee concerns. The Board understands that the ability to perform NMB's statutory mission depends on its employees, and we hold a strong commitment to making the NMB a fair, satisfying and safe place to work.

The NMB has an established ombudsman program, which has been in place since 2004. The NMB ombudsmen act as impartial third-parties. The Board has designated two employees to serve as ombudsman, who periodically receive individual grievances from NMB employees or contractors regarding actions of NMB managers or other employees.

Page 5

This ombudsman program has received varied numbers of complaints throughout the years. In 2016, two complaints were lodged by NMB employees. In 2017, four complaints were lodged by NMB employees.

GAO cites two incidents of employee promotion or reassignment, which did not adhere to OPM's hiring guidance and appropriate federal protocols. The Board is conducting a review of these two incidents and is aware of the manner in which they were conducted. The Board will determine any necessary corrective actions. We commit to fully comply with all OPM protocols in the future.

Recommendation 4 – Revise NMB's travel policy and develop appropriate internal controls to ensure compliance with federal requirements for travel.

GAO has identified the need to revise the NMB travel policy. The Board is in the process of reviewing the current travel policy. Any identified areas of non-compliance with federal travel regulations in the policy will be revised to be in compliance with federal travel regulations.

The Board notes that the current federal travel regulations allow exceptions for many of the incidents identified by the GAO and NMB investigations. However, to the extent that exceptions made by former NMB officials were not appropriately considered, we advise that the Board will take steps to ensure that all current and future travel exceptions will follow federal guidelines and are fairly applied.

Recommendation 5 – Revise NMB's telework policy and develop appropriate internal controls to ensure compliance with federal requirements for telework.

The Board will revise NMB's telework policy and strengthen internal controls, as necessary. The Board has learned that one former employee, who was with the NMB for only four months in 2017, did not

participate in telework training and did not have a written and signed telework agreement before engaging in telework.

The Board notes that all telework-qualified NMB employees did participate in telework training in 2017, with the exception noted above and two former managers, who also left the NMB in 2017. All current NMB employees qualified for telework or involved in the management of teleworking employees have participated in telework training. Going forward, the NMB will ensure telework-qualified employees participate in telework training and track any exceptions granted to the telework policy.

Page 6

Comments on Additional Actions Needed in Response to GAO's 2013 and 2016 Recommendations Not Fully Implemented:

- Develop and Fully Implement Information Security Program Assessing Third Party Providers.

NMB will continue to improve our cyber-security practices and have added extending coverage to the 3rd party provider applications from the Bureau of Financial Services (BFS) and the Department of Interior (DOI) to our Plan of Action and Milestone (POAM) list for 2018. NMB will re-write our NMB Enterprise Cloud (NMBEC) Information System Security Plan (ISSP) to address required upgrades with a planned completion in April of 2018.

- Conduct Privacy Assessment on Personally Identifiable Information NMB uses and shares.

NMB acknowledges the limited progress on privacy controls per NIST SP 800-53 rev-4 and have had a POAM recognizing it since June, 2016. NMB will perform privacy impact assessments as part of the new ISSP by April 2018.

Respectfully submitted by:

Gerald W. Fauth, Chairman National Mediation Board

Kyle Fortson, Member

National Mediation Board

Lin-99 Puchala, Member tional Mediation Board

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's website (<https://www.gao.gov>). Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to <https://www.gao.gov> and select "E-mail Updates."

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, <https://www.gao.gov/ordering.htm>.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

Connect with GAO

Connect with GAO on [Facebook](#), [Flickr](#), [Twitter](#), and [YouTube](#).
Subscribe to our [RSS Feeds](#) or [E-mail Updates](#). Listen to our [Podcasts](#).
Visit GAO on the web at <https://www.gao.gov>.

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Website: <https://www.gao.gov/fraudnet/fraudnet.htm>
E-mail: fraudnet@gao.gov
Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Orice Williams Brown, Managing Director, WilliamsO@gao.gov, (202) 512-4400,
U.S. Government Accountability Office, 441 G Street NW, Room 7125,
Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, DC 20548

Strategic Planning and External Liaison

James-Christian Blockwood, Managing Director, spel@gao.gov, (202) 512-4707
U.S. Government Accountability Office, 441 G Street NW, Room 7814,
Washington, DC 20548