



December 2013

NATIONAL MEDIATION BOARD

Strengthening Planning and Controls Could Better Facilitate Rail and Air Labor Relations

GAO Highlights

Highlights of [GAO-14-5](#), a report to congressional committees

Why GAO Did This Study

A small federal agency, NMB facilitates labor relations in two key transportation sectors—railroads and airlines—through mediation and arbitration of labor disputes and overseeing union elections. Established under the Railway Labor Act, NMB’s primary responsibility is to prevent work stoppages in these critical industries. The FAA Modernization and Reform Act of 2012 required GAO to evaluate NMB programs and activities. GAO examined NMB’s (1) strategic planning and performance measurement practices; (2) controls for key management areas; and (3) challenges, if any, in overseeing elections. GAO assessed NMB’s management practices using internal control standards and other GAO criteria; interviewed NMB officials, current and former board members, and key stakeholders from rail and air labor and management groups; and reviewed relevant federal laws, regulations, and NMB policies.

What GAO Recommends

Congress should consider authorizing an appropriate federal agency’s IG to provide oversight of NMB. NMB should implement a formal strategic planning process and develop performance goals and measures to meet federal requirements, develop a process to address audit findings, implement key components of an information security and privacy program, and engage in strategic workforce planning. NMB should also collect and analyze data on the types of rail grievances filed to help improve efficiency in its arbitration process. In commenting on a draft of this report, NMB said it would address our recommendations and described actions it plans to take.

View [GAO-14-5](#). For more information, contact Revae Moran at (202) 512-7215, or moranr@gao.gov.

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What GAO Found

The National Mediation Board (NMB) recently updated its strategic plan but is not meeting some federal strategic planning and performance measurement requirements. NMB missed deadlines for updating its strategic plan and lacks performance measures to assess its progress in meeting its goals, even though an agency’s strategic plan should form the basis for everything an agency does.

NMB also lacks some controls in key management areas that could risk its resources and its success:

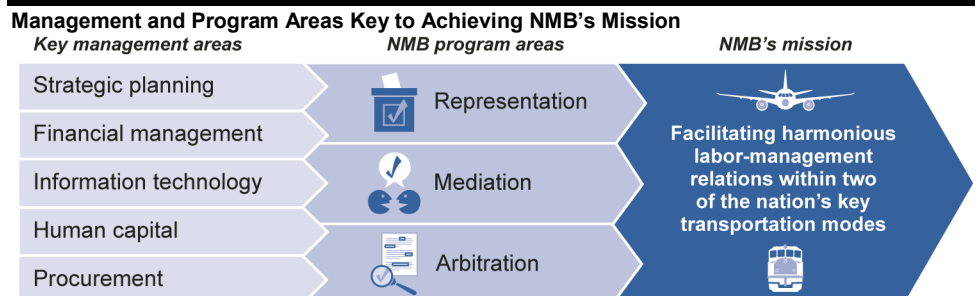
Financial accountability: NMB contracts for annual financial statement audits and internal control reviews. However, it lacks a formal process for addressing identified deficiencies, a key internal control.

Information technology: NMB recently transitioned to new information technology systems but is missing key management and security controls, including an information security program that fully implements federal requirements.

Human capital: NMB has taken steps to improve its human capital program but improvements are still needed. Although all NMB senior managers are eligible for retirement, NMB has not engaged in formal workforce planning to identify gaps in staff skills, and strategies, such as training, to address them.

Procurement: NMB has established some key procurement policies and controls but weaknesses remain. For example, in a recent purchase of tablet computers for some staff, NMB did not follow its own procedures to assess the need for the devices or solicit competition.

Other management issues: NMB does not have an Inspector General (IG), and oversight by other federal agencies is limited. NMB also has a significant number of pending rail arbitration cases, and it lacks complete data on the types of cases filed to help it address the backlog and the costs.



Source: GAO analysis of NMB documents.

NMB has adapted to challenges presented by large union elections resulting from airline mergers and has implemented improvements such as online voting. In 2010, NMB changed its rules for determining a majority in union elections. While this process caused disagreement among some stakeholders, NMB data suggest that the percentage of elections in which a union was certified has, thus far, remained relatively constant in the years before and after the rule change.

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Abbreviations

ADR	Alternative dispute resolution
CIO	Chief Information Officer
FedRAMP	Federal Risk and Authorization Management Program
FISMA	Federal Information Security Management Act of 2002
FMCS	Federal Mediation & Conciliation Service
FLRA	Federal Labor Relations Authority
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
OMB	Office of Management and Budget
OPM	Office of Personnel Management
RLA	Railway Labor Act

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December 3, 2013

The Honorable John D. Rockefeller, IV
Chair
The Honorable John Thune
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Tom Harkin
Chair
The Honorable Lamar Alexander
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Bill Shuster
Chair
The Honorable Nick J. Rahall, II
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

Railroads and airlines are two key transportation sectors, and disruptions to these industries can be costly for passengers, workers, consumers, and businesses. For example, as a result of an 89-day pilot strike in spring 2001 at Comair, a regional carrier for Delta Air Lines, the carrier did not operate its 815 daily flights for an estimated 25,000 passengers. The airline's 1,350 striking pilots lost an estimated \$14 million in salaries, and the airline reported laying off an additional 1,600 nonstriking workers. Recognizing the significant consequences of work stoppages as a result of disputes between labor and management, in 1926, Congress enacted the Railway Labor Act (RLA) to provide a framework for ensuring harmonious labor relations in the railroad industry. A 1934 amendment to the RLA created the National Mediation Board (NMB), an independent federal agency that provides mediation and other services to help resolve labor disputes over issues such as working conditions and rates of pay. In addition, NMB is responsible for resolving disputes over union representation and the interpretation of collective bargaining agreements. A 1936 amendment to the RLA expanded coverage to the airline industry. The FAA Modernization and Reform Act of 2012 further amended the

RLA and mandated GAO to evaluate NMB's programs and management practices.¹ Specifically, this report examines:

1. the extent to which the National Mediation Board follows federal strategic planning requirements and leading practices,
2. the extent to which the National Mediation Board has key management controls in place—for financial management; information management, security, and privacy; human capital and workforce development; and procurement—to fulfill its mission, and
3. how the National Mediation Board addresses challenges, if any, in its process for overseeing employee representation elections.

To address these objectives, we reviewed relevant federal laws and regulations and interviewed NMB officials, current board members, and all board members who served from 2000 through 2012. We also interviewed key stakeholders, including representatives from rail and air labor and management groups. We reviewed key NMB documents, including its most recent 5-year strategic plan, its annual Performance and Accountability Report, and congressional budget justification documents, and compared NMB's performance planning and reporting practices with requirements in the Government Performance and Results Act of 1993 (GPRA) as updated by the GPRA Modernization Act of 2010 (GPRAMA) and related leading practices identified in our previous work. We also reviewed NMB's financial statement audits for fiscal years 2004 through 2012 and the most recent cycle of internal control reviews of program and management areas, and interviewed NMB's independent auditors about identified internal control weaknesses. We did not independently assess the findings in these financial audits and program reviews. We also reviewed NMB policies and procedures for representation, mediation, and arbitration, including the NMB Representation Manual, board member briefing book, sample ballots, and rulemaking procedures.

¹Pub. L. No. 112-95, § 1004, 126 Stat. 11,147. FAA stands for the Federal Aviation Administration. The Act also required GAO to review the processes applied by NMB to certify and decertify representation of employees by labor organizations and the extent to which those processes are consistent with the processes of other agencies with jurisdiction over labor relations. See GAO, *National Mediation Board Mandates in the FAA Modernization and Reform Act of 2012*, [GAO-12-835R](#) (Washington, D.C.: June 27, 2012).

In addition, we assessed NMB's plans, policies, and practices in financial management; information management, security, and privacy; human capital; and procurement using GAO's Standards for Internal Control in the Federal Government,² the Federal Information Security Management Act of 2002, Privacy Act of 1974, E-Government Act of 2002, guidelines developed by the Office of Management and Budget (OMB) and the National Institute of Standards and Technology, and criteria developed by GAO in prior work.³ We identified key practices from these criteria and assessed whether NMB is following these practices (NMB is taking appropriate actions and has a formal plan, policy, or other document), partially following (NMB is taking some actions but does not have a formal plan or policy and/or some additional steps are needed to consider this practice implemented), or minimally following (NMB is taking little or no action to address this practice). We also tested the security settings on NMB information technology devices, such as laptops, smartphones, and tablets.

We interviewed officials at OMB and the Office of Personnel Management (OPM) to determine how these agencies provide oversight and guidance to NMB. We assessed the reliability of data from OPM's annual human capital survey of NMB staff, and data provided by NMB on representation election outcomes, and determined that these data were sufficiently reliable for our purposes. See appendix I for a detailed description of our scope and methodology.

We conducted this performance audit from September 2012 through December 2013 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.

²GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

³Specifically, we used GAO's prior work on strategic workforce planning to assess NMB's human capital practices. GAO, *Human Capital: Key Principles for Effective Strategic Workforce Planning*, [GAO-04-39](#) (Washington, D.C.: Dec. 11, 2003). To assess NMB's procurement function, we used GAO, *Framework for Assessing the Acquisition Function at Federal Agencies*, [GAO-05-218G](#) (Washington, D.C.: September 2005).

Background

The RLA was passed in 1926, in part to establish a legal framework for avoiding disruptions in rail service and interstate commerce. The RLA was later amended to extend its provisions to the airline industry, and also to establish NMB as a federal agency to administer the law. According to NMB, the original bill was drafted jointly by rail management and labor representatives and was enacted by Congress without amendment. The RLA establishes several key principles. For example:

- It requires parties (rail and air carriers and their employees' representatives) to "exert every reasonable effort" to settle disputes to avoid interruption to commerce or to the operation of any railroad or airline.⁴
- It gives participants the right to designate their representatives under the Act without interference from the other party and assures employees the right to determine a collective bargaining representative without interference from their employers.⁵
- It establishes 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.⁶

NMB's Organization and Resources

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. No more than two members of the board can be from the same political party.⁷ In August 2013, a third board member was confirmed by the Senate, filling a board position that had been vacant since June 2012. The board members typically designate a chairman annually. The board members provide overall leadership and strategic direction for NMB, and retain responsibility for key functions such as releasing the parties from the mediation of major disputes if no agreement can be reached. The board has delegated day-to-day administration and oversight to NMB's Chief of Staff and General Counsel (see fig. 1). As of August 2013, NMB had 49 employees, including the 3 board members. NMB also contracts

⁴45 U.S.C. § 152, First.

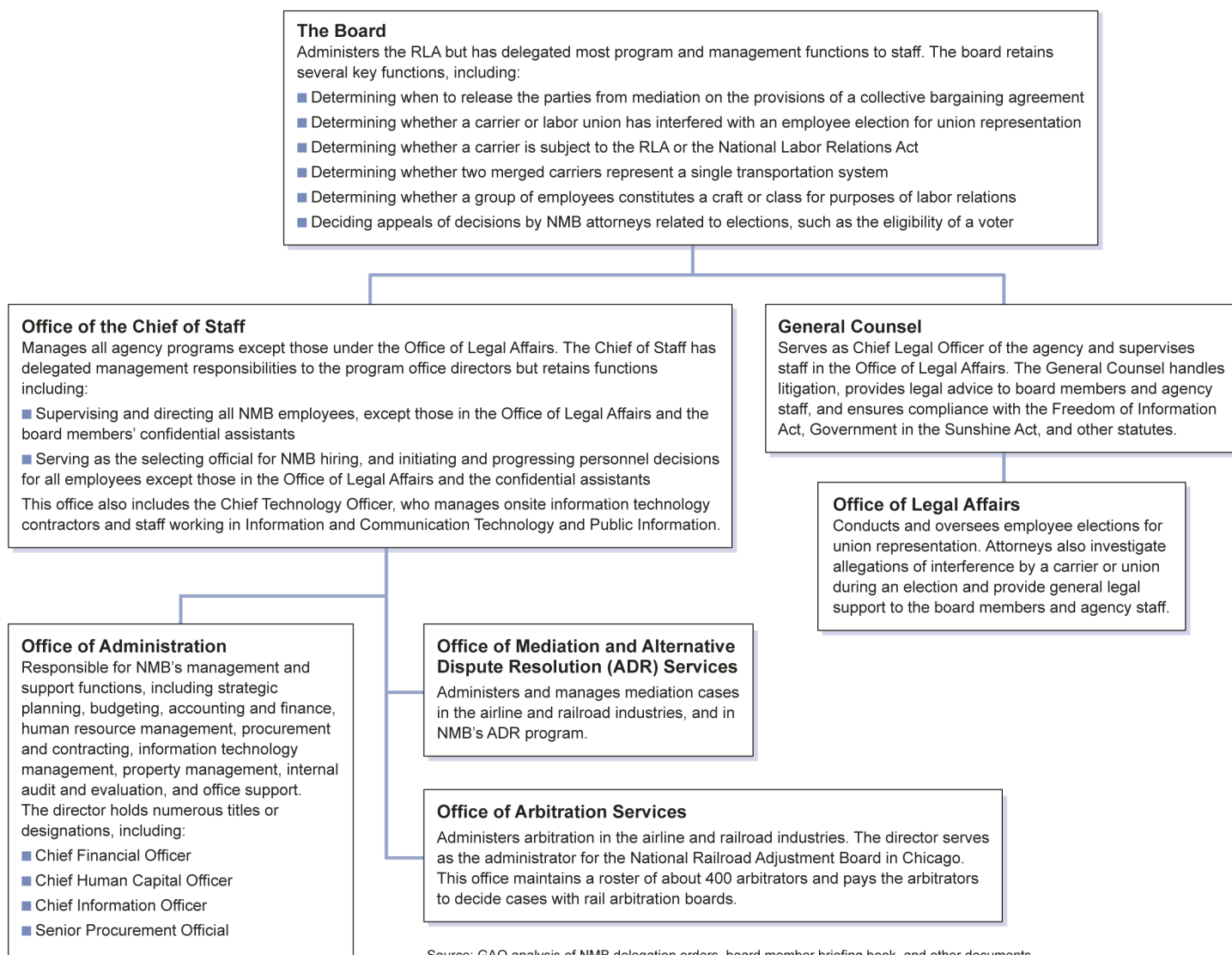
⁵45 U.S.C. § 152, Third.

⁶45 U.S.C. §§ 152, Sixth, 153 and 155.

⁷45 U.S.C. §154, First.

with approximately 430 arbitrators. In fiscal year 2013, NMB had an operating budget of \$12.7 million.

Figure 1: NMB Organization and Key Responsibilities



Union Representation Elections

NMB has sole jurisdiction to certify employee unions in the rail and air industries. Under the RLA, employees have a right to select a union free from influence, interference, or coercion from their employer.⁸ Eligible employees in a craft or class at a given carrier—those who perform the same duties and functions, such as locomotive engineers or pilots—select a union representative on a systemwide basis. For example, the pilots at an airline must be represented by the same union regardless of where they are located geographically. Unions are selected through secret-ballot elections conducted by NMB.

If there is a question concerning representation of a craft or class, NMB is charged with resolving the representation dispute through its Office of Legal Affairs. For an election to occur, at least 50 percent of the eligible employees in the craft or class must submit signed authorization cards indicating their interest in being represented by a union.⁹ An NMB investigator compares signatures on those cards to signature samples for all eligible voters in the craft or class provided by the carrier to assess their authenticity and determine if there is a sufficient percentage to hold an election. The investigator also addresses any challenges to the eligibility of individual voters. Votes are cast by phone or via the Internet, in an election overseen by NMB. If a union receives a majority of the votes, NMB certifies the union as the employee representative. Additionally, NMB protects against “interference, influence, or coercion by either party” during this process, and it can order a new election or shorten the time before another union may apply to represent the employees if it determines any of these have occurred.

In 2010, NMB changed its rules for certifying a union.¹⁰ Previously, a union had to receive votes from a majority of all employees in a craft or class who were eligible to vote in order to be certified, or approved, as the

⁸45 U.S.C. § 152, Fourth. We use the terms “carrier” and “employer” synonymously in this report.

⁹45 U.S.C. § 152, Ninth. NMB has stated that the RLA does not preclude an employer from voluntarily recognizing a union as the employee representative. See, e.g., *Galveston Wharves*, 4 NMB 200, 203 (1962). If employees do not have representation and only one union is under consideration, NMB can certify the union if the parties agree in writing and upon presentation by the union of authorization cards signed by a majority of the represented employees.

¹⁰Representation Election Procedure, 75 Fed. Reg. 26,062 (May 11, 2010)(codified at 29 C.F.R. pts. 1202 and 1206).

employee representative. This meant that employees who did not vote were, in effect, counted as voting against union representation. Under the rule change, an employee who chooses not to vote is no longer counted because union representation is now determined by a majority of votes cast. Numerous stakeholders, including union and carrier groups and members of Congress, submitted comments for and against the change.¹¹ In addition, one NMB board member at the time wrote a dissenting opinion in the proposed and final rules published in the Federal Register.

Resolution of “Major Disputes” in Collective Bargaining

Once a union has been certified to represent a group of employees, the carrier is required to negotiate with—and only with—that union in a process known as collective bargaining. When the parties cannot reach agreement on the terms of a new or revised collective bargaining agreement—such as working conditions or rates of pay—it is classified as a “major dispute.”¹² Either party can apply for NMB’s mediation services to resolve their differences or NMB may impose mediation if it finds that resolving the dispute is in the public’s interest. 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. In fiscal year 2012, NMB provided mediation services in 144 cases, 46 of which were closed and 98 of which were pending at the end of that year. Mediation continues until the parties reach agreement or NMB determines that further mediation will not be effective and offers the parties the option of interest arbitration, in which case a neutral arbitrator would determine what provisions to include in the new or modified collective bargaining agreement. Either party may, however, refuse arbitration. If either party

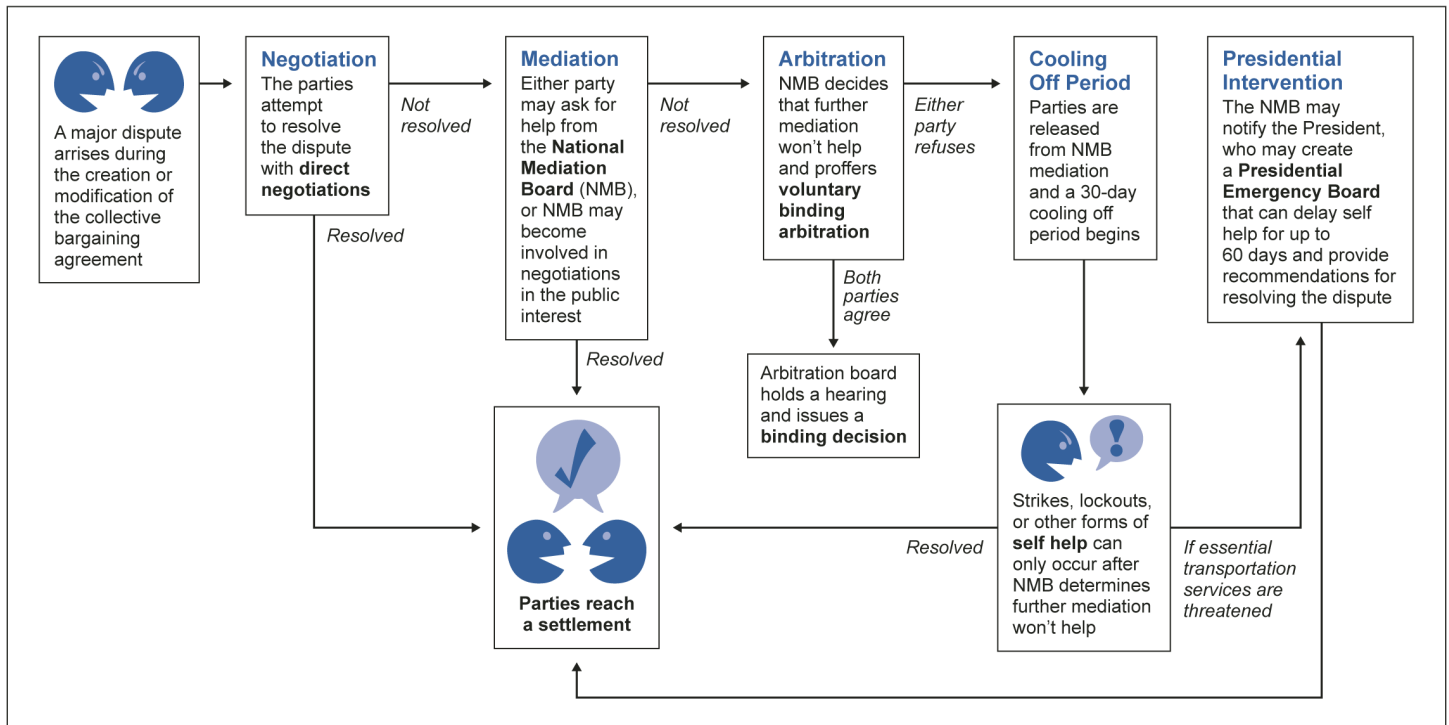
¹¹One stakeholder group sued NMB to stop implementation of the rule. On December 16, 2011, the U.S. Court of Appeals for the District of Columbia affirmed a District Court decision which held that NMB had the authority to make the rule change and that it was consistent with the RLA. *Air Transport Association of America, Inc. v. National Mediation Board*, 663 F.3d 476 (2011).

¹²The terms “major dispute” and “minor dispute” are not found in the RLA. Rather, NMB and federal courts have, over the years, used these terms, common in the history of railway labor issues, to differentiate types of disputes. As the Supreme Court defined these terms in 1945, major disputes “[relate] to disputes over the formation of collective agreements or efforts to secure them. They arise where there is no such agreement or where it is sought to change the terms of one.... They look to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past.” *Elgin, Joliet & Eastern Railway Co. v. Burley*, 325 U.S. 711, 723 (1945). Minor disputes, on the other hand, “[relate] either to the meaning or proper application of a particular provision with reference to a specific situation...” *Id.*

refuses, a 30-day cooling off period is triggered before the parties can exercise what is known as self help. Self help includes actions such as the union going on strike or the carrier denying employment or refusing to admit union employees onto the property in a lockout. To prevent this work stoppage, the President may create a Presidential Emergency Board to help settle the dispute.¹³ In fiscal year 2012, there was one Presidential Emergency Board created in a dispute involving the five largest U.S. railroads and numerous short-line and regional railroads. (See fig. 2 for a description of the process for resolving major disputes under the RLA.)

¹³Under the RLA, if a dispute between a carrier and its employees, in the judgment of NMB, threatens “substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service,” NMB shall notify the President, who may, in his discretion, create a board to investigate and report on the dispute. 45 U.S.C. § 160. Creation of an emergency board delays a strike, lockout, or other form of self help, generally for 60 days. The emergency board has 30 days to issue a report with recommendations for settling the dispute. The parties to the dispute have another 30-day period to consider the recommendations and reach an agreement. There are different Presidential Emergency Board provisions for publicly funded commuter railroads.

Figure 2: The Process for Resolving “Major Disputes” under the RLA



Source: GAO analysis of NMB documents.

In addition to mediation and arbitration, NMB provides voluntary alternative dispute resolution (ADR) services, such as facilitation and training, to help unions and carriers learn to resolve disputes using less confrontational methods.

Resolution of “Minor Disputes” under Collective Bargaining Agreements

The RLA also offers another type of arbitration—grievance arbitration—to help resolve “minor disputes.”¹⁴ As opposed to major disputes, which involve the establishment or modification of a collective bargaining agreement, minor disputes are disagreements over how to interpret and apply existing agreements. For example, an employee may file a

¹⁴Unless it is otherwise clear from context, in this report, when we refer to arbitration, we are generally referring to grievance arbitration to resolve minor disputes, rather than interest arbitration, which can be used to resolve major disputes.

grievance if he or she believes they were wrongfully fired or disciplined. If the carrier and employee cannot resolve their dispute, the RLA permits a party to refer the dispute to arbitration before an adjustment board created by the rail or air industry.¹⁵ The adjustment board consists of a carrier representative, a union representative, and a neutral arbitrator. In most instances, the neutral is selected by the two representatives. If they are unable to agree on an individual, they may request that NMB appoint a neutral. Grievances that the parties have been unable to resolve themselves are submitted to this board for resolution. In this capacity, the neutral is called upon to break a tie. Unlike major disputes, minor disputes cannot trigger self-help actions such as strikes or lockouts.

NMB does not directly provide arbitration services through its own staff, 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 (currently \$300 per day) and travel expenses of the arbitrator. In fiscal year 2012, NMB's arbitrators closed 3,869 rail grievance arbitration cases and 2,084 were pending at year's end. In that year, NMB's arbitration budget was \$2 million, not including NMB staff salaries.

Other Federal Labor Relations Agencies

NMB differs in several key ways from the other three labor relations agencies in the United States: the National Labor Relations Board (NLRB), Federal Mediation & Conciliation Service (FMCS), and Federal Labor Relations Authority (FLRA) (see table 1).

¹⁵45 U.S.C. § 153, First (i). The arbitration of unresolved minor disputes in the rail industry takes place before either the National Railroad Adjustment Board 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) and 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 power 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.

Table 1: Comparison of NMB to Other Federal Labor Relations Agencies

Agency				
	National Mediation Board	National Labor Relations Board	Federal Mediation & Conciliation Service	Federal Labor Relations Authority
Authorizing statute	Railway Labor Act	National Labor Relations Act	Labor-Management Relations Act of 1947 (Taft-Hartley Act)	Federal Service Labor-Management Relations Statute
Target populations	Railroad and airline carriers and workers	Private sector employers and workers, with some exclusions such as certain agricultural, gaming and religious entities. U.S. Postal Service employees are also covered.	Private, public, and federal sector employers and workers	Most federal employers and workers
Union certification	<ul style="list-style-type: none"> Voluntary recognition by carrier and workers Secret ballot election 	<ul style="list-style-type: none"> Voluntary recognition by employer and workers Secret ballot election NLRB-mandated recognition^a 	n/a – FMCS does not oversee union certification	<ul style="list-style-type: none"> Secret ballot election
Union decertification	No formal decertification process	Formal decertification process and voluntary disclaimer of interest ^b	n/a	Formal decertification process
Dispute resolution	<ul style="list-style-type: none"> Mediation and arbitration Mediation is mandatory before the parties can exercise self help (e.g., strike) NMB pays for railroad arbitration; the parties pay for airline arbitration 	n/a	<ul style="list-style-type: none"> Mediation and arbitration Mediation is voluntary (except in the health care industry) Parties pay for arbitration. (FMCS only provides lists of potential arbitrators.) Arbitration is based on a private agreement between an employer and a union. 	<ul style="list-style-type: none"> Impasse procedures for bargaining disputes^c and arbitration Parties pay for arbitration

Source: GAO analysis of applicable federal statutes and agency documents, and interviews with agency officials.

^aNLRB also may require an employer to recognize and bargain with a union if a majority of employees signed authorization cards and the employer engaged in unfair labor practices that make a fair election unlikely.

^bA union may submit a Disclaimer of Interest, stating that it waives and disclaims any right to represent a group of employees.

^cThe Federal Service Impasses Panel is an entity within FLRA that provides additional assistance in resolving disputes if FMCS services cannot resolve the dispute or if the parties request the Panel's services.

Executive Branch Oversight Responsibilities

OMB and OPM have key oversight responsibilities for all federal agencies, including NMB. Among other things, OMB is responsible for providing oversight of agencies' management, including information technology and procurement. OMB is also responsible for preparing and implementing the President's annual budget and for providing guidance to agencies on how to comply with the GPRAMA Modernization Act of 2010 (GPRAMA).¹⁶ OPM is the central personnel management agency of the federal government charged with administering and enforcing federal civil service laws, regulations, and rules. OPM also maintains a personnel management oversight program to ensure that agencies comply with merit system principles and standards set by the office.¹⁷ As part of this program, OPM conducts audits of agencies' human capital programs.¹⁸ In addition, OPM administers a survey of federal employees to measure employees' perceptions of whether, and to what extent, conditions characterizing successful organizations are present in their agencies.

Federal Performance Planning and Reporting Requirements under GPRA and GPRAMA

In 1993, Congress passed GPRA, which established strategic planning, performance planning, and performance reporting as a framework for agencies to communicate progress in achieving their missions. 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 requires agencies to have additional leadership involvement and accountability.

¹⁶GPRA stands for the Government Performance and Results Act. Pub. L. No. 111-352, 124 Stat. 3866 (2011).

¹⁷5 U.S.C. § 1104(b)(2).

¹⁸These reviews are conducted to determine how well an agency's human resources programs, operations, and use of personnel authorities contribute to accomplishment of the agency's mission and whether the actions taken comply with merit systems principles, laws, and regulations. Merit systems principles constitute the framework for federal human resources management. See, 5 U.S.C. § 2301.

NMB Is Missing Key Elements of Successful Performance Planning and Reporting

NMB Lacks a Robust Strategic Planning Process for Meeting Federal Requirements

NMB lacks a robust strategic planning process, with formal mechanisms for gathering congressional and stakeholder input, and as a result, the agency has not met some federal requirements for performance planning. For example, NMB updated its previous strategic plan, which covered fiscal years 2005 to 2010, in November 2012, 7 years after it was issued.¹⁹ NMB also missed a February 2012 deadline set by GPRAMA for agencies to update their existing strategic plans to be consistent with new requirements. NMB officials said they engage in strategic planning but have not made the development of a strategic planning document a high priority.²⁰ The agency had delayed the start of the strategic planning process until the completion of changes in the agency's information technology systems. The sequencing of NMB's strategic plan development—after the roll-out of other initiatives—runs counter to our previous findings on leading results-oriented organizations. Strategic planning should provide the basis for everything an organization does. For example, all decisions, including those involving resources such as information technology systems and human capital investments, should flow from an agency's strategic plan. Developing a strategic plan can help

¹⁹GPRA required strategic plans to be updated at least every 3 years.

²⁰Since 1993, GPRA has required executive agencies to complete strategic plans in which they define their missions, establish results-oriented goals, and identify the strategies that will be needed to achieve those goals. The accompanying committee report noted that a multi-year strategic plan articulates the fundamental mission (or missions) of an organization, and lays out its long-term general goals for implementing that mission, including the resources needed to reach these goals. The clearer and more precise these goals are, the better able the organization will be to maintain a consistent sense of direction, regardless of leadership changes at the top. S. Rep. No. 103-58, at 15 (1993).

Key Requirements for Agencies' Strategic Planning Process (GPRAMA)

- Cover at least a 4-year period
- Issued approximately 1 year after a Presidential term begins
- Involve stakeholder input when developing or adjusting the plan
- Consult with appropriations, authorizing, and oversight congressional committees, both majority and minority, at least every 2 years
- Made available online and notify the President and Congress

Source: GAO analysis of GPRAMA.

clarify organizational priorities and unify an agency's staff in the pursuit of shared goals.²¹

Agencies are also required to issue a new strategic plan in February 2014, and every 4 years thereafter, concurrent with the President's budget (issued no later than the first Monday in February). (See sidebar for key strategic planning requirements.) In August 2013, NMB officials said they intend to complete a new strategic plan by December 2013, before the February 2014 deadline.

NMB lacks a systematic way of involving congressional and other stakeholders in its strategic planning process. As noted earlier, agencies should consult with Congress and other stakeholders for input when developing and adjusting their strategic plans. NMB officials told us they do not have a routine process for gathering input from congressional stakeholders during the strategic planning process, a key focus of GPRAMA. Consultations with Congress are intended, in part, to ensure that agency performance information is useful for congressional oversight and decision making. As we have previously reported, having pertinent and reliable performance information available is necessary for Congress to adequately assess agencies' progress in making performance and management improvements and ensure accountability for results.²²

In addition, many stakeholders in the rail and air industries, both in labor and management, told us NMB does not seek out and incorporate stakeholder input in its strategic planning efforts, and NMB officials confirmed that they do not have a formal mechanism for involving stakeholders in this process. NMB officials told us that the agency instead receives input from stakeholders in informal ways, such as getting

²¹GAO, *Agencies' Strategic Plans Under GPRA: Key Questions to Facilitate Congressional Review*, [GAO/IGD-10.1.16](#) (Washington, D.C.: May 1997); and *Executive Guide: Effectively Implementing the Government Performance and Results Act*, [GAO/IGD-96-118](#) (Washington, D.C.: June 1996).

²²At the request of Congress, we developed a guide in June 2012 to assist members of Congress and their staffs in ensuring that the consultations required by GPRAMA are useful for assessing agency performance. See GAO, *Managing for Results: A Guide for Using the GPRA Modernization Act to Help Inform Congressional Decision Making*, [GAO-12-621SP](#) (Washington, D.C.: June 15, 2012). See also, GAO, *Financial and Performance Management: More Reliable and Complete Information Needed to Address Federal Management and Fiscal Challenges*, [GAO-13-752T](#) (Washington, D.C.: July 10, 2013).

feedback from parties during the course of mediation, or from members of two joint labor-management groups: the Dunlop II Committee, which has reviewed NMB's mediation function, and the Section 3 Subcommittee, which has reviewed NMB's rail arbitration function. However, when we interviewed officials from both groups, they reported that NMB hasn't always involved them in planning. Stakeholder involvement is important to help agencies ensure their efforts and resources are being targeted to the highest priorities.²³

NMB's Performance Plan Lacks Objective and Quantifiable Goals and Measures for Reporting on Results

Without a robust strategic planning process as a guide, NMB is also not meeting federal requirements for annual performance planning and reporting. Federal agencies are required to develop annual performance plans. These plans use performance measurement to reinforce the connection between the long-term strategic goals outlined in an agency's strategic plan and the day-to-day activities of its managers and staff.

Annual performance plans are to include performance goals which cover each agency's program activities as listed in the budget, a description of the necessary resources and strategies to achieve these goals, a balanced set of performance measures for each goal, and a discussion of how the measures will be verified. (See sidebar for key performance planning requirements.)

An agency's performance goals establish desired performance levels, and performance measures are used to assess progress toward achieving those goals. Yet the goals and sub-goals listed in NMB's fiscal year 2014 budget submission do not consistently meet the basic GPRAMA requirements of being objective, measurable, and quantifiable.²⁴ For example, NMB states that it has a goal to "better track

²³[GAO/GGD-96-118](#).

²⁴OMB defines a performance goal as a statement of the level of performance to be accomplished within a timeframe, expressed as a tangible, measurable objective or as a quantitative standard, value, or rate. For the purposes of this guidance and implementation of GPRAMA, a performance goal includes a performance indicator, a target, and a time period. GPRAMA requires performance goals to be expressed in an objective, quantifiable, and measurable form unless agencies, in consultation with OMB, determine that it is not feasible. In such cases an "alternative form" performance goal may be used. See OMB, *Preparation and Submission of Strategic Plans, Annual Performance Plans, and Annual Program Performance Reports*, OMB Circular No. A-11, Part 6 (August 2012).

the history of cases” within its mediation and ADR programs. However, this goal does not contain a target number of mediation cases to be tracked (quantifiable), what would be considered “better” (objective), a performance indicator to gauge progress (measurable), or a time period in which to accomplish this goal (see fig. 3). Without measurable targets or timeframes, these goals do not establish intended performance or allow NMB and the public to assess progress.

**Key Requirements for Agencies’
Performance Plans (GPRAMA)**

- **Cover 2 fiscal years**—the current and upcoming timeframes are concurrent with the President’s budget (issued no later than the first Monday in February of each year); made available online and notify the President and Congress
- **Must contain:** (1) objective, quantifiable, measureable performance goals for all program activities, (2) a description of how performance goals contribute to agency strategic plan goals and objectives and federal government performance goals, (3) goal leaders, (4) contributing programs and activities, (5) strategies and resources needed, (6) milestones, (7) a balanced set of performance measures/indicators, (8) the basis for comparing actual results with performance goals, (9) the means to be used to verify/validate data (description of how the agency will ensure data accuracy and reliability), (10) a description of how the agency is working with other agencies to achieve its performance goals and relevant federal government performance goals, and (11) major management challenges

Source: GAO analysis of GPRAMA.

Figure 3: Example of NMB Performance Goals, for Mediation and ADR, Fiscal Year 2014 Budget Submission

FY 2014 Mediation and ADR Performance Goals

Strategic Plan General Goal 1: Mediation & Alternative Dispute Resolution
 Mediation and ADR will continue to foster the prompt and peaceful resolution of collective bargaining disputes in the airline and railroad industries.

I. Continue to develop standard training for mediators to ensure they are kept abreast of the latest trends in mediation and gain additional industry and technical knowledge in both air and rail.

II. Better track the history of cases.

- Work with Arbitration and Representation to revise and improve the agency case management system.

III. Expand current ADR capabilities to address the changing labor environment in the airline and railroad industries and provide more varied assistance in dispute resolution both between and during contract negotiations.

- Use outreach and promotion efforts to raise the visibility of the ADR program.
- Continue to utilize partnerships with institutions of higher learning to improve and expand ADR Services.
- Review ADR services for potential deletions, additions, or changes.

IV. Pursue interagency projects, including personnel exchange programs, to enhance labor-management relations throughout the airline and railroad industries.

- Implement and develop interagency projects with other labor and transportation agencies with the goal of enhancing labor-management relations in the airline and railroad industries.

V. Engage in outreach and education programs to ensure that the NMB is seen as a world leader in airline and railroad labor-management issues.

- Submit proposals for presentations at dispute resolution conferences.

NMB's goals are not...

- X** Objective,
- X** Measurable, or
- X** Quantifiable

Source: GAO analysis of NMB's FY 2014 budget submission.

Since NMB has not developed objective, measurable, or quantifiable goals, it is not well positioned to develop performance measures to use in reporting progress or results in any program area. NMB's fiscal year 2011-2016 strategic plan stated that the agency plans to formulate performance measures for its strategic goals and each of the related

performance goals in its annual budget submission.²⁵ However, the performance goals in NMB's fiscal year 2014 budget submission did not contain indicators or measures that could be used to gauge agency performance. NMB officials said they are currently working to develop more quantifiable, time-based performance measures for NMB program areas in its next strategic plan. Our previous work on results-oriented organizations shows that many agencies need years to develop a sound set of performance measures.²⁶ NMB officials told us they internally track measurable targets, such as the number of days NMB mediators meet with parties before reaching resolution on a specific collective bargaining agreement, but the agency does not report these metrics publicly.²⁷ Without objective, measurable, and quantifiable performance goals made available to the public, Congress and stakeholders lack information on the extent to which NMB is making annual progress toward its strategic goals and how NMB is planning to use its resources.

²⁵Prior to July 2013, NMB had not made current and past congressional budget submission documents, which contain detailed performance and budget information, available on the agency's website. Since fiscal year 2008, OMB has required agencies to make their budget justification materials, including performance plans, available to the public by posting materials on the Internet within 2 weeks after they are transmitted to Congress. In July 2013, during the course of our review, NMB posted these materials on the agency's website for the first time.

²⁶[GAO/GGD-96-118](#).

²⁷In the past, NMB included time-based targets in its performance reporting. For example, NMB's fiscal year 2005 Performance and Accountability Report contained the following performance goals for mediation: (1) mediation applications will be responded to within 3 business days; (2) a mediator will be assigned within 10 calendar days following docketing of all mediation cases; and (3) the mediator and board will endeavor to assist the parties in reaching an agreement within 12 months (365 days) of an application. In 2007, independent auditors noted that NMB's Office of Mediation was not achieving its performance goals. In response, the Director of the Office of Mediation stated that NMB was no longer using those time-based goals. NMB officials told us that it is difficult to develop measurable performance goals for mediation services because there are many factors outside the agency's control, such as the parties' willingness to enter into an agreement.

NMB Lacks Some Key Management Controls

NMB Has Most Key Controls for Financial Accountability but Lacks a Formal Mechanism to Address Deficiencies

NMB is following most key practices for financial accountability and control, an integral part of an organization's management that should reach throughout all departments and programs as well as financial management and reporting functions. There are two key practices, however, that NMB is following only partially or minimally (see table 2).²⁸

Table 2: Extent to Which NMB Is Following Key Practices for Financial Accountability and Control

Practice	Extent NMB is following	Example
Prepare annual, comprehensive, agencywide financial statements	Following	NMB prepares annual, comprehensive, agencywide financial statements.
Have an independent audit performed of the most recent fiscal year financial statements	Following	NMB contracts for an independent audit of its most recent fiscal year financial statements.
Receive an unqualified (clean) audit opinion on the most recent fiscal year's financial statements	Following	NMB reports it has received 15 years of unqualified financial audit opinions.
Annually obtain an auditor's opinion or report on internal controls over financial reporting	Following	NMB contracts for a report on internal controls over financial reporting.
Annually receive an auditor's opinion or report on internal controls over financial reporting that contains no material internal control weaknesses	Partially following	NMB's fiscal year 2010 and 2011 reports on internal controls over financial reporting each contained a material weakness.
Conduct an annual assessment of internal control for compliance with standards for internal control and OMB requirements	Following	NMB contracts for an assessment of internal controls over one key program or management area annually.
Monitor corrective actions to ensure systemic weaknesses and identified deficiencies are resolved	Minimally following	NMB does not have a formal mechanism for tracking resolution of findings and recommendations.
Obtain an annual auditor's report on compliance with laws and regulations	Following	NMB contracts for an annual auditor's report on compliance with laws and regulations.

²⁸Key practices have been identified in prior GAO work such as GAO, *Executive Guide: Creating Value Through World-class Financial Management*, [GAO/AIMD-00-134](#) (Washington, D.C.: April 2000), or in OMB guidelines.

Practice	Extent NMB is following	Example
Annually receive an auditor's report on compliance with laws and regulations that contains no reported noncompliance	Following	NMB's reports on compliance with laws and regulations for fiscal years 2004 through 2012 contained no reported noncompliance.

Source: GAO analysis of NMB documents and interviews with NMB officials and independent auditors.

Note: In this and other management areas, we assessed whether NMB is following key practices (NMB is taking appropriate actions and has a formal plan, policy, or other document), partially following (is 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 (NMB is taking little or no action to address this particular practice).

NMB routinely prepares comprehensive, agencywide financial statements and contracts for independent audits of those financial statements. The agency has reported that it received 15 years of unqualified financial audit opinions.²⁹ As part of these audits, the auditors also provide NMB with a report on internal controls over financial reporting.³⁰ In those reports, the auditors identified a material weakness in two of the years audited (2010 and 2011).³¹ The material weakness in both years was related to the untimely recording of obligations related to NMB's arbitration services. This issue was downgraded to a significant deficiency in fiscal year 2012 after NMB took steps to address the issue.³² According to a senior NMB official, the agency expects to address all recommendations related to the 2012 significant deficiency with full implementation of its Arbitrator Workspace, a web-based information system that replaces multiple

²⁹We obtained the nine most recent annual financial statement reports NMB could provide. In all 9 years, NMB received unqualified audit opinions. We did not independently assess these audits.

³⁰Auditors also report annually on NMB's compliance with laws and regulations over financial reporting and have found no instances of material or immaterial noncompliance in the last 9 years.

³¹Under standards issued by the American Institute of Certified Public Accountants, control deficiencies exist when the design or operation of a control does not allow management or employees to prevent or detect misstatements on a timely basis. A significant deficiency is one that adversely affects an agency's ability to reliably initiate, authorize, record, process, or report financial data in accordance with generally accepted accounting principles. A material weakness is a significant deficiency, or combination of significant deficiencies, that could result in a material misstatement in financial statements. Because of inherent limitations in internal controls, misstatements, losses, or noncompliance may nevertheless occur and not be detected.

³²The auditors also identified a significant deficiency in fiscal year 2008 in NMB's internal controls over financial reporting related to a different issue—ensuring that transactions are properly recorded, processed, and summarized.

electronic forms used by NMB to track arbitrator activity and financial obligations to contracted arbitrators.

In addition to annual financial statement audits, NMB contracts with the same independent auditors to review its internal controls over one key program area (mediation, arbitration, representation, and ADR) or management area (procurement and personnel/payroll) annually.³³ The law commonly known as the Federal Managers' Financial Integrity Act of 1982³⁴ and its implementing guidance from OMB³⁵ require federal agencies to develop and implement appropriate and cost-effective internal controls for results-oriented management, assess the adequacy of those internal controls, identify needed areas of improvement, take corresponding corrective action, and provide an annual statement of assurance regarding internal controls and financial systems.

However, NMB does not have a mechanism for ensuring prompt resolution of findings, a key internal control. When asked how the agency monitors the status of recommendations or findings in its internal control reviews, NMB officials said it is assumed, based on management's written response in the reports, that any weaknesses will be addressed and resolved by the date of the next review of that topic. However, that review may not occur for as many as 8 years. For example, the representation function was last reviewed in fiscal year 2005, and auditors began their next review of that topic in June 2013. In addition, NMB has not consistently provided management responses, which are written descriptions of the actions the agency plans to take to address deficiencies. For example, in the 2009-2010 report on internal controls over arbitration, NMB did not submit a management response to the five findings and recommendations in the report.³⁶ In addition, NMB did not submit responses to findings and recommendations in the auditors'

³³NMB officials told us that ADR will no longer be reviewed separately; it will be reviewed as part of the review of mediation services.

³⁴31 U.S.C. § 3512(c), (d).

³⁵OMB Circular No. A-123, *Management's Responsibility for Internal Control* (rev. Dec. 21, 2004).

³⁶When asked, NMB officials responded that the agency did not submit a management response to the recommendations in this review because NMB did not agree with the findings. In addition, they noted that they were occupied with addressing the material weakness identified in the financial statement audit previously discussed.

management letters that accompanied NMB's financial statement reports in fiscal years 2011 and 2012.³⁷

It is also not clear that top NMB management officials are monitoring the resolution of findings and recommendations made by independent auditors.³⁸ Within NMB, department heads are responsible for implementing the auditors' recommendations. The Chief of Staff and the board do not assume operational responsibility for addressing the findings of independent auditors. In addition, it is not clear that NMB's board members are given routine, formal reports on the status of findings or how they are resolved. While some NMB officials told us board members are briefed or given reports on the status of resolving findings, officials could not provide documentation, such as minutes of meetings in which audit findings or internal control reviews and their resolution were discussed. Officials told us that it is the agency's policy not to keep minutes of board meetings. Furthermore, NMB's auditors do not follow up on the status of recommendations in the internal control reviews until the date of the next review unless the recommendation is related to NMB's annual financial statement audit.³⁹ As a result, some recommendations made by auditors to improve internal controls or NMB operations may not be addressed. In the 2008-2009 report on NMB's personnel and payroll, auditors found the same deficiency they identified in their fiscal year 2003

³⁷During NMB's financial statement audit, auditors noted certain matters involving internal control and NMB's operations that warranted management's attention. The auditors issued a management letter to NMB discussing all nonreportable conditions involving NMB's operations. NMB officials told us that they were not able to submit management responses, given other year-end tasks.

³⁸We have reported that agency management should be responsive to the findings and recommendations of audits and other reviews aimed at strengthening internal control. See GAO, *Internal Control Management and Evaluation Tool*, [GAO-01-1008G](#) (Washington, D.C.: August 2001). OMB has also issued guidance to agencies in its Circular A-50 specifying the role of the designated audit follow-up officials and emphasizing the importance of monitoring the implementation of resolved audit recommendations in order to assure promised corrective action is actually taken.

³⁹NMB officials said there are some cases when the agency has asked auditors for interim guidance on processes or operations. Although this is outside the auditors' contractual duties, NMB officials have met with the independent auditors before the implementation of initiatives to ensure the initiatives would address audit recommendations.

review on the same topic.⁴⁰ In addition, auditors made the same recommendation to NMB in their management letters for fiscal years 2008, 2010, 2011, and 2012.⁴¹

NMB Has Not Fully Implemented Key Information Security and Privacy Controls

NMB relies on information technology to carry out its mission. The agency uses computer systems and networks to host applications, files, email services, and web access, and to manage its records and financial information. During fiscal year 2013, NMB switched its network infrastructure, including its email, files, web access, and other applications, to a commercial vendor. Further, in May 2013, it switched its financial management system to the Bureau of the Public Debt's Administrative Resource Center.⁴² NMB also plans to bring its records management system into its cloud computing environment in fiscal year 2014.

Federal laws and policies require federal agencies to implement key practices to effectively manage and secure their information systems and information, and protect the privacy of personal information they collect and use. For example, the Federal Information Security Management Act of 2002 (FISMA)⁴³ requires federal agencies to develop, document, and implement an agencywide information security program to provide security for the information and information systems that support the operations and assets of the agency, including those operated on behalf of the agency by a contractor or another agency. Such a program

⁴⁰In their 2008-2009 report on NMB internal controls over personnel and payroll, auditors found NMB had not yet developed and implemented policies and procedures to address the accuracy and timely submission of personnel/payroll data provided by General Services Administration staff. The report noted that this was a repeat finding.

⁴¹NMB was unable to provide a copy of the fiscal year 2009 management letter.

⁴²According to NMB officials, the change in financial systems occurred because the system would no longer be supported.

⁴³FISMA was enacted as title III, E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2946.

includes eight key practices.⁴⁴ To improve information security and reduce overall information technology operating costs for agencies, OMB also issued a memorandum⁴⁵ instructing the heads of departments and agencies to implement common security settings for computers running Windows operating systems. In addition, the Privacy Act of 1974 and E-Government Act of 2002 describe, among other things, agency responsibilities with regard to protecting personally identifiable information.⁴⁶

NMB has not fully implemented key information security and privacy practices (see table 3).

⁴⁴These practices include (1) periodic assessments of risk; (2) policies and procedures based on assessments of risk; (3) subordinate plans for providing adequate information security; (4) security awareness training for employees and contractors; (5) periodic testing and evaluation of information security policies, procedures, and agency practices; (6) process for planning, implementing, evaluating, and documenting remedial actions to address known security deficiencies; (7) procedures for detecting, reporting, and responding to security incidents; and (8) plans and procedures to ensure continuity of operations for information systems that support the operation and assets of the agency.

⁴⁵OMB, *Implementation of Commonly Accepted Security Configurations for Windows Operating Systems*, M-7-11 (March 22, 2007).

⁴⁶See 5 U.S.C. § 552a and Pub. L. No. 107-347, § 208, 116 Stat. 2899, 2921. The terms personal information and personally identifiable information are used interchangeably in this report to refer to any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, Social Security number, date and place of birth, mother's maiden name, or biometric records, and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

Table 3: Extent to Which NMB Is Following Key Practices for Information Security and Privacy

Practice	Extent NMB is following	Example
Information Security Practices		
Conduct periodic risk assessments that consider cyber threats and vulnerabilities	Partially following	NMB conducted a risk assessment in 2011 for its network, records management, and financial systems. However, NMB has not documented a risk assessment for its new network environment and financial management systems.
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 draft policies and procedures for managing agency documents, information, records, and its new network environment. However, it did not fully adopt 26 of 63 required security settings on its Windows laptop computers that we reviewed.
Develop system security plans that cover networks, facilities, and systems or groups of systems, as appropriate	Partially following	A system security plan had been developed for NMB's network, records management, and financial systems. NMB has a draft security plan for its new network. However, NMB has not developed a security plan for its new financial management system.
Provide security awareness training for agency employees and contractors	Partially following	NMB employees have taken the required annual security awareness training. However, NMB did not provide sufficient evidence to support that its contractors have received the required training.
Conduct periodic management testing and evaluation that includes testing of all major systems at least annually	Partially following	NMB last tested and evaluated its Enterprise Network, records management, and financial systems in 2011.
Establish a remedial action process to address identified information security control weaknesses	Partially following	NMB has developed a preliminary plan of actions; however, it does not include milestones. In addition, NMB has not established and documented a remedial action process for its information security control weaknesses.
Establish security-incident procedures for detecting, reporting, and responding to incidents	Minimally following	NMB has not developed procedures for detecting, reporting, and responding to security incidents.
Establish and maintain up-to-date continuity of operations plans and procedures for information systems	Partially following	NMB's disaster recovery plan has not been updated since May 2006. Its continuity of operations plan has not been updated since June 2011 and does not reflect the current information technology environment.
Privacy Practices		
Assign agency official for privacy	Following	NMB has designated its Chief Information Officer as its senior agency official for privacy.
Establish policies and procedures for privacy protections	Minimally following	NMB did not provide evidence to support it has established policies and procedures governing privacy protections.
Conduct privacy impact assessments ^a for systems containing personally identifiable information	Minimally following	NMB did not provide a privacy impact assessment for its Enterprise Network, records management, and financial management systems. In addition, NMB did not provide evidence to support that a privacy impact assessment will not be required for its new computing environments.

Practice	Extent NMB is following	Example
Issue systems of records notice ^b	Minimally following	NMB did not issue systems of records notice for its Enterprise Network, records management, and financial systems. In addition, NMB did not provide evidence to support that systems of records notice would not be required for its Enterprise Network and financial management systems.

Source: GAO analysis of NMB documents and interviews with agency officials.

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

^bA 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.

According to agency officials, key practices were not followed because NMB has been in the process of transitioning its information technology network and systems. NMB plans to update and finalize all of its information security policies and procedures to reflect its new information technology environment. It also plans to conduct a test and evaluation of its information security controls to ensure that they are appropriately designed and operating effectively. However, the agency has not established timeframes or milestones for completing these actions. Until NMB fully develops, documents, and implements an agencywide information security program, increased risk exists that the confidentiality, integrity, and availability of its information will be compromised.

Finally, although NMB officials stated that the agency has taken steps to provide privacy protections for personal information accessed or held by NMB, they did not provide supporting documents to demonstrate how the agency plans to ensure the privacy of personal information that may be contained in its new computer environments. Until it establishes privacy policies, NMB will have limited assurance that the personal information it collects and uses is adequately protected.

NMB Has Taken Steps to Improve Its Human Capital Program but Does Not Follow Key Planning Practices

NMB has taken steps to improve its human capital program, such as increasing oversight of mediators and providing additional training opportunities to its staff. For example, in 1997, in response to recommendations made by the rail and air labor-management committees, NMB relocated all its mediators from the field to its headquarters in Washington, D.C.⁴⁷ In 2000, NMB established individual development plans to improve staff training, and, in 2010, began providing free or low cost training to its staff through partnerships with two universities and other efforts. More specifically, NMB officials teach classes at those universities, or the agency provides office space for the universities to hold training sessions for labor relations practitioners in exchange for several NMB staff attending the training sessions at no charge.

Despite these improvements, NMB's actions are not guided by a strategic workforce plan, which is essential for every federal agency in that it addresses two critical needs: (1) aligning an organization's human capital program with its current and emerging mission and programmatic goals; and (2) developing long-term strategies for acquiring, developing, and retaining staff to achieve programmatic goals. Workforce planning is a key internal control, as agency management should ensure that skill needs are continually assessed and that the organization is able to obtain and maintain a workforce with the skills necessary to achieve organizational goals.⁴⁸ Although agencies may take a variety of approaches to workforce planning, GAO has identified some principles

⁴⁷Previously, NMB's mediators were working from their homes as directed by agency officials at NMB's headquarters in Washington, D.C. The rail and air joint committees were formed following the 1994 report from the Commission on the Future of Worker-Management Relations. The joint committees made a number of additional recommendations regarding mediation. NMB also created senior mediator positions to supervise and help improve oversight of mediators. However, effective June 2013, senior mediators no longer have supervisory duties, and all mediators report directly to the Director of Mediation and ADR Services. NMB officials told us they made this change to facilitate more direct involvement in mediation case management on the part of board members and the Chief of Staff. In addition, officials noted that the Director of Mediation and ADR Services retired, effective September 2013. As a result of his departure, mediators will temporarily report directly to the Chief of Staff.

⁴⁸[GAO/AIMD-00-21.3.1.](#)

that agencies should follow, including determining critical skills and competencies, and developing strategies for closing any gaps.⁴⁹

NMB has not developed a strategic workforce plan that incorporates these key practices (see table 4). Although the agency indicated in 2009 that it would develop one as part of its last human capital plan, it has yet to do so. NMB's lack of strategic workforce planning was also identified by OPM in its last evaluation of the agency's human capital program in 2007.⁵⁰

⁴⁹GAO, *Human Capital: Key Principles for Effective Strategic Workforce Planning*, [GAO-04-39](#) (Washington, D.C.: Dec.11, 2003).

⁵⁰OPM noted in its 2007 evaluation that NMB did not have a formal approach to workforce planning. OPM found that while NMB collected some workforce data, it did not analyze the data in such a way as to identify the human capital needed to meet organizational goals, develop strategies to identify workforce competency gaps, or ensure appropriate organizational structure. OPM made three recommendations regarding workforce planning. According to OPM officials, its recommendations to agencies are suggestions to improve human capital management, and agencies are not required to take action. OPM considered its evaluation of NMB to be closed as of August 2008.

Table 4: Extent to Which NMB Is Following Key Practices for Effective Workforce Planning

Practice	Extent NMB is following	Example
Involve top management, employees, and other stakeholders in developing, communicating, and implementing the strategic workforce plan	Minimally following	NMB does not have a strategic workforce plan, although it indicated it would develop one in its last human capital plan in 2009. Any human capital plans to date were developed by the Director of the Office of Administration without substantive input from other senior managers, employees, or stakeholders.
Determine the critical skills and competencies that will be needed to achieve current and future programmatic results	Minimally following	NMB has not determined the critical skills and competencies needed to achieve current and future program results, although it indicated it would do so in its last human capital plan in 2009. Instead, NMB identifies needed competencies and skills on a case-by-case basis when it hires to fill a vacancy.
Develop strategies tailored to address gaps in number, deployment, and alignment of human capital approaches for enabling and sustaining the contributions of all critical skills and competencies	Minimally following	NMB does not have an up-to-date succession plan or other strategies to address gaps in competencies or skills.
Build the capability needed to address administrative, educational, and other requirements important to support workforce planning strategies	Minimally following	NMB uses human capital flexibilities, such as recruitment and retention incentives and a telework program, but the use of these flexibilities is not tied to a strategic workforce planning effort.
Monitor and evaluate agency's progress toward its human capital goals and the contribution human capital results have made toward achieving programmatic results	Minimally following	NMB does not have measurable goals and objectives related to strategic workforce planning. NMB has goals and objectives in its 2009 human capital plan, but it does not have a process for evaluating its plan and ensuring that it takes the included steps. As a result, NMB reported not completing many of the actions laid out in the plan.

Source: GAO analysis of NMB documents and interviews with NMB officials.

NMB has not determined the skills and competencies it needs to achieve current and future program results, nor has it systematically identified gaps or strategies to fill them. Instead, senior NMB officials said they identify needed skills and competencies on a case-by-case basis, such as when hiring to fill a specific vacancy. Officials added that NMB does not have difficulty hiring staff. However, some stakeholders identified, and NMB officials acknowledged, possible gaps in skills and competencies among NMB mediators, an occupation NMB has identified as critical to its mission. For example, several NMB officials and most of the labor and management stakeholders we interviewed said NMB staff, particularly

mediators, lack rail industry experience. NMB officials confirmed that 10 of its 13 mediators come from the airline industry, 2 come from the railroad industry, and 1 does not have a background in either industry.⁵¹ NMB officials said it is difficult to recruit mediators from the rail industry because there are few rail employees willing to leave their railroad jobs, particularly because industry salaries and benefits are greater than what NMB can offer. NMB officials described a few strategies they have used to recruit more staff with rail experience through networking at industry conferences, but they do not have a formal recruiting strategy. In addition, NMB officials said they cross-train staff in both the rail and air industries and, in 2013, took mediators on a tour of a rail property to learn more about the rail industry. Similarly, an NMB official and some carrier officials we interviewed said most NMB mediators come from labor union, rather than management, backgrounds. NMB officials confirmed that 8 of its 13 mediators formerly held union labor relations positions while 4 held labor relations positions with carriers. (One mediator did not have a labor relations background with either a union or carrier.) NMB officials told us the agency values professional experience in rail or air labor relations over mediation experience because they have found that mediators need to understand the industries in order to be effective. However, two airline management officials said that having more mediators with union backgrounds than with management backgrounds could create the perception that the agency is not completely neutral in collective bargaining.

Further, NMB has not employed strategies, such as succession planning or leadership development, to help close gaps in critical skills and competencies. Succession planning and leadership development were also identified as problems by OPM in its 2007 evaluation of NMB.⁵² NMB officials identified succession planning as the agency's greatest human capital challenge: All senior managers are eligible to retire and all of the mediators are in their second careers and eligible to retire. However, NMB has not revised its succession plan since it was first drafted in 2006,

⁵¹The Director of the Office of Mediation and ADR Services told us that about 60 percent of NMB's mediation cases are in the rail industry, in part because recent airline mergers and consolidations have reduced the number of separate airline mediation cases.

⁵²In its 2007 evaluation, OPM found NMB had not conducted a leadership competency gap analysis or succession planning. OPM also found NMB did not offer or make available leadership programs. Interviews OPM held with NMB staff at all levels confirmed that there is no formal succession plan in place for managers, supervisors, or staff.

even though it has since made organizational changes, such as reinstating the Chief of Staff position in 2010.⁵³ The Director of the Office of Administration said NMB's small size and limited budget make it difficult to hire additional staff to succeed retirement-eligible senior staff. The director also told us the agency is taking some steps, such as establishing agreements with other agencies to provide administrative services and free up NMB staff time for developmental opportunities.

Training also can be an important strategy to address gaps in skills or competencies, and NMB has taken steps to improve its training program. In July 2013, NMB revised its training policy, which establishes a process through which the agency identifies training priorities and needs. Specifically, the policy states that training for new staff or to correct performance deficiencies takes priority over training to improve satisfactory performance or to prepare employees for career advancement. Each department prepares an annual training plan that identifies training needs, in line with agency training priorities. Then each employee and his or her supervisor develop an individual development plan that identifies specific training opportunities to meet that employee's needs. These individual development plans are approved by the department director. Employees are required to fill out evaluations after completing courses. Officials said training opportunities usually consist of industry conferences, on-the-job training, or training developed through partnerships with individual carriers, unions, or universities. However, NMB has not established minimum training requirements for all staff beyond training required of all government employees, such as information security training, or training required to maintain professional certifications, such as continuing legal education courses. OPM made several recommendations to NMB regarding training in its 2007 evaluation.⁵⁴ According to OPM's fiscal year 2012 Federal Employee

⁵³A joint rail and air labor-management committee, the Dunlop II Committee, recommended in a December 2009 report that NMB reestablish the Chief of Staff position in order to improve NMB's cohesion and effectiveness.

⁵⁴Specifically, OPM noted that the training provided by NMB, which may be limited due to budgetary constraints, is not linked to succession planning. In addition, NMB did not have data to assess whether its training and development initiatives and strategies support mission-critical competencies, or whether the return on investments in training yields positive results toward mission accomplishment. OPM recommended that NMB collect and analyze such data. OPM also found that NMB lacked a process to evaluate the effectiveness and impact of training provided, and stated that NMB should identify and assess training needs annually and evaluate training to determine how well it meets short- and long-range program needs.

Viewpoint Survey, 85 percent of NMB staff said the agency's workforce has the job-relevant knowledge and skills necessary to accomplish organizational goals, but only 50 percent were satisfied with the training they received for their present job. Thirty-six percent of NMB employees were unsatisfied, compared with 24 percent at all small agencies combined.⁵⁵

Although NMB officials said that mediators arrive at the agency with significant industry experience, stakeholders identified a need for improved training. Most of the stakeholders we interviewed said that the quality of NMB mediators varies. Most said mediators need to continually update their training to stay abreast of industry trends and effective mediation techniques. Similarly, the April 2010 report by a joint rail and air labor-management committee, the Dunlop II Committee, found that the level of initial and continuing training for mediators was inadequate, and that mediators would benefit from more standardized, comprehensive, and regular training, particularly in mediation skills. The committee noted that most mediators were formerly advocates, not neutral parties, and needed training in mediation skills. NMB has taken some steps to address concerns about mediator training. For example, two stakeholders we interviewed said mediators could use training to interpret and evaluate cost estimates provided by the parties as part of collective bargaining, and in July 2013, NMB officials told us that they brought in two experts to provide training on evaluating cost estimates. In addition, NMB officials said that the agency is developing a core curriculum for new mediators consisting of two courses on mediation and negotiation skills. The first 5-day course, on mediation, is now available, and officials said the negotiation skills course will be available starting in spring 2014.

Finally, because NMB has not established a strategic workforce plan, the agency has not monitored and evaluated the results of its workforce planning efforts, including whether they contribute to accomplishing the agency's strategic goals. While NMB set human capital goals and objectives in its 2009 human capital plan, it has not tracked or evaluated

⁵⁵OPM, *2012 Federal Employee Viewpoint Survey: National Mediation Board Small Agency Management Report* (Washington, D.C.). The annual Federal Employee Viewpoint Survey developed by OPM measures employees' perceptions of whether, and to what extent, conditions characterizing successful organizations are present in their agencies. We provided data from other small agencies to provide context, but it is difficult to compare NMB data to data from all other small agencies combined because of the small sample size at NMB.

its progress in meeting them and has not taken many of the actions detailed in the plan. For example, under a goal to “guide human capital decisions by using a data-driven, results-oriented planning and accountability system,” NMB had a strategic objective to “develop an NMB accountability program based on OPM’s accountability system.” However, as of April 2013—4 years later—a senior official reported that NMB has not developed such an accountability system, citing other pressing priorities. In its 2007 evaluation, OPM also noted that NMB did not have an accountability system that met OPM requirements.

NMB Follows Some Key Procurement Practices but Weaknesses Remain

NMB is partially following key practices we have identified as critical for agencies to manage their procurement functions, but we found some shortcomings (see table 5).⁵⁶ NMB is following a key practice of appropriately placing the procurement function within the organization: The procurement function is at an equal organizational level as other key mission offices, such as the Offices of Arbitration and Mediation, the primary internal customers for whom goods and services are acquired. Further, as Director of the Office of Administration, the senior procurement official also oversees the financial and information technology functions, thereby providing direct insight into other key internal functions involved in the procurement process. The placement of the office facilitates proper management support and visibility within the organization to help the agency meet its overall mission and needs—key principles that we previously identified.⁵⁷ In addition, NMB involves its internal stakeholders in the procurement process. For example, NMB’s procurement procedures call for a multidisciplinary approach in that relevant NMB departments and subject matter experts are to be involved in making purchase requests, identifying requirements, and reviewing vendors’ proposals.

⁵⁶GAO, *Framework for Assessing the Acquisition Function at Federal Agencies*, GAO-05-218G (Washington, D.C.: September 2005).

⁵⁷GAO-05-218G.

Table 5: Extent to Which NMB Is Following Key Practices for Procurement

Practice	Extent NMB is following	Example
Align acquisition with agency mission and needs	Following	NMB has a designated procurement official to manage the procurement function who is appropriately positioned to coordinate NMB's procurement activities and enforce procurement policies.
Establish policies and processes to govern the procurement function	Partially following	Procurement policies and processes have been established and some are shared in NMB's employee handbook. NMB's independent auditors found that NMB generally established adequate controls over the procurement process, but some weaknesses exist in following procedures and maintaining appropriate documentation. NMB lacks goals or measures for procurement in NMB's agencywide strategic plan.
Establish knowledge and information tools to help make well-informed acquisition decisions	In progress ^a	NMB transitioned to a new system in May 2013 intended to integrate its financial management and procurement systems and facilitate accurate and timely spend analyses and reporting.

Source: GAO analysis of NMB documents and interviews with NMB officials, compared to practices in GAO's Framework for Assessing the Acquisition Function at Federal Agencies. The framework includes a fourth area, human capital, which is discussed more broadly earlier in the report.

^aWe did not score NMB on this procurement area because, during the course of our review, the agency was in the process of transitioning to new financial management and procurement systems and had not fully implemented the related information tools.

While NMB has established policies and procedures to oversee the procurement process, we and others have identified some weaknesses in following procedures and maintaining appropriate documentation. NMB's independent auditors reviewed the internal controls over NMB's procurement activities in fiscal year 2011 and identified some weaknesses. For example, auditors recommended that NMB improve its process for organizing and maintaining records because it found that NMB was unable to provide certain documents for about 25 percent of its purchases under \$3,000. NMB officials said they have made changes to the agency's processes to maintain greater control over documents that support its procurement decisions.

We found that NMB did not follow its own policies and procedures in purchasing laptops and iPads. NMB spent about \$110,000 to purchase 55 laptop computers for its staff in September 2012. Before making the purchase, NMB solicited quotations from three vendors and received quotations from two of the vendors for the laptops. However, NMB chose a quotation representing different technical specifications than the specifications originally provided to vendors. When we asked for the business case for purchasing these laptops, an NMB official drafted a

memo, dated March 2013, stating that the agency chose the more expensive laptops because of features such as durability, touch-screen capability, and a design that switches easily between laptop and tablet. This official further stated that the laptops NMB did not select were largely viewed as inferior to the laptops NMB selected. However, when requesting quotations, NMB did not include these criteria—touch-screen capability and a convertible laptop and tablet design—in its technical specifications. Rather, the specifications it provided to vendors were that of a more traditional laptop. The vendor whose quotation NMB selected submitted two quotations at NMB’s request—one meeting NMB’s original specifications and one for the convertible laptop and tablet NMB ultimately selected. There was no documentation that NMB notified the other vendors of its revised specifications and provided these vendors with an opportunity to submit additional quotations.

NMB also purchased iPads in October 2012 for half its staff over the written objection of the individual who serves as Chief Financial Officer, senior procurement official, and Chief Information Officer. However, according to federal information technology management policy and internal NMB documents, the Chief Information Officer should have direct authority over developing and implementing information technology policy, including information technology investments.⁵⁸ In a memo, this official said the purchase of the iPads, in addition to new laptops that also function as tablet computers, and new smartphones, was not in keeping with a November 2011 Executive Order to limit the number of devices




⁵⁸Under the federal government’s 25 Point Implementation Plan to Reform Federal Information Technology Management and OMB Memorandum M-11-29, agency Chief Information Officers’ (CIO) roles should change to move away from just policymaking and infrastructure maintenance to encompass true portfolio management for all information technology. Agency CIOs must be positioned with these responsibilities and authorities to improve the operating efficiency of their agencies. CIOs must drive the investment review process for information technology investments and have responsibility over the agency’s entire information technology portfolio.

provided to employees.⁵⁹ Instead of NMB purchasing the iPads, this official recommended that employees make use of NMB's policy allowing employees to use their own information technology devices. In total, NMB spent more than \$130,000 to purchase 25 iPads and 55 laptops, and to upgrade 22 smartphones for agency staff.⁶⁰ The devices have many common features, calling into question the necessity for having all three (see fig. 4). We calculated that, as of July 2013, NMB had issued all three devices to 19 staff members, including the 2 board members—about 40 percent of NMB's workforce.

⁵⁹Specifically, Executive Order 13589: Promoting Efficient Spending (November 9, 2011) states: "Each agency should take steps to limit the number of IT devices (e.g., mobile phones, smartphones, desktop and laptop computers, and tablet personal computers) issued to employees, consistent with the Telework Enhancement Act of 2010 (Pub. L. No. 111-292, 124 Stat. 3165), operational requirements (including continuity of operations), and initiatives designed to create efficiency through the effective implementation of technology." In addition, NMB's Bring Your Own Device Policy, effective July 2013, notes the benefits of allowing employees to use their own information technology devices, including the ability to carry just one device for personal and work use, and potential cost savings to the agency.

⁶⁰As of July 2013, NMB had issued 48 of the 55 laptops and 21 of the 25 iPads to staff. In August 2013, officials told us that the new board member would receive a laptop, iPad, and smartphone. NMB officials also told us they purchased an additional smartphone for a contractor.

Figure 4: NMB Issued Information Technology Devices with Similar Functions to Almost Half Its Workforce, as of July 2013

	 Apple iPad (Tablet)	 Lenovo ThinkPad x230t (Laptop)	 Droid 4 (Smartphone)
Touch screen	✓	✓	✓
Camera	✓	✓	✓
Supports videoconferencing	✓	✓	✓
Wireless Internet access	✓	✓	✓
Access to Web and email	✓	✓	✓
Physical keyboard		✓	✓
Phone calls and voicemail		a	✓
NMB personnel issued device	21 (of 48)	48 (of 48)	22 (of 48)

Source: GAO analysis of NMB documents and specifications from the device manufacturers.

^aThe laptop has videoconferencing capabilities.

NMB also did not follow its own procurement procedures in purchasing the iPads. Based on the documents NMB provided us, the agency did not follow procedures to identify the requirements before purchasing the iPads, as required.⁶¹ There was no statement of requirements prepared, in accordance with NMB procedures, and a senior NMB official told us the purchase was made without outlining specific requirements or assessing whether the iPad, or a tablet device by another manufacturer, would meet those requirements. After we requested documentation of the agency’s business case, the Chief of Staff, who approved the purchase request for

⁶¹According to NMB’s Procurement Cycle Contracting Procedures, the department director requesting the purchase should prepare a statement of work outlining the requirements, and then meet with the Director of the Office of Administration and the Contracting Official to discuss the requirements.

the iPads submitted by a board member in September 2012, drafted a memo dated March 2013 stating that the agency's move to a cloud computing environment and the functionality of the iPads, in addition to their light weight and relatively low cost, makes them ideal for use at the bargaining table and in training. The memo also stated that, prior to the purchase, many mediators were using their own iPads.

In addition, NMB did not seek competition in making the iPad purchase. NMB's procurement procedures call for full and open competition if the agency does not use the General Services Administration Federal Supply Schedules to select vendors in making purchases.⁶² However, NMB did not take steps to consult the General Services Administration schedule or use full and open competition. NMB officials explained that they initially wanted to use the government's primary telecommunications provider to obtain these devices but they learned that they could not purchase the devices without also purchasing the data plan offered by that provider. Officials then contacted the iPad's manufacturer, who referred them to a federal reseller but did not provide a list of additional resellers. NMB also did not maintain documentation for this purchase that explained the absence of competition, as called for in the Federal Acquisition Regulation for procurements under \$150,000.⁶³

At the time NMB purchased the laptops, iPads, and smartphones, it lacked a mechanism for ensuring that its procurement procedures were consistently adhered to, such as a checklist for taking required steps in the procurement process or maintaining proper documentation. Internal control standards specify that agencies should implement mechanisms that enforce management's directives. This would include, for example, the process of adhering to procedures and requirements for procuring goods and services.⁶⁴ Such actions are integral to ensuring effective

⁶²NMB's Procurement Cycle Contracting Procedures require the Director of the Office of Administration and/or the Contracting Official to determine the appropriate contracting vehicle. If the General Services Administration schedule is used, NMB's Contracting Official should solicit three cost proposals and review the proposals with a subject matter expert. If there is no vendor identified on the schedule, NMB will do full and open competition by placing a statement of work on FedBizOpps. FedBizOpps is the government website used to announce the government's needs and intent to enter into a contract for goods or services.

⁶³Federal Acquisition Regulation § 13.106-3(b)(3)(i).

⁶⁴[GAO/AIMD-00-21.3.1](#).

stewardship of government resources and obtaining the best possible value for the government. In July 2013, NMB officials told us they had recently created such a checklist, as part of its transition to a new procurement system. This checklist includes required steps, such as conducting market research and checking the General Services Administration schedule for available equipment and vendors, and requires staff to include documentation of such steps in the contract file. The checklist also requires staff to list three vendors and, if the vendor with the lowest bid is not selected, provide a rationale and additional documentation on the decisions made.

NMB Faces Additional Management Issues

Lack of Federal Oversight

Although our review focused on internal controls in specific management areas at NMB, we identified several broader management issues as well.

OMB and OPM provide limited budgetary and human capital oversight of NMB. OMB reviews NMB's budget request and strategic plans, among other documents, but it has not focused on NMB management issues. According to OMB officials, OMB does not provide the same level of oversight for organizations with small budgets and staff as it does for larger organizations. The same is true for OPM. Until 2012, OPM annually reviewed and provided feedback on NMB's human capital management report.⁶⁵ However, beginning in 2013, OPM officials told us that OPM no longer requires small agencies to submit their human capital management reports for review. OPM last audited NMB's human capital program in 2007. OPM followed up with NMB and, as of 2008, considered that evaluation closed. It has no plans for future evaluations. However, OPM surveys NMB's employees as part of its Federal Employee Viewpoint Survey of federal agencies, which captures NMB employees' views of the agency's strengths and challenges.

Although NMB contracts for annual financial statement audits and rotating internal control reviews of program and management areas, the agency

⁶⁵According to 5 C.F.R. § 250.203(a)(3), agencies' annual human capital management reports, provided to OPM, must provide an evaluation of and report on the agency's existing human capital management policies, programs, and operations, as they relate to the agency's overall mission/program performance. The report must address the performance measures and milestones contained in the agency human capital plan, including compliance measures with respect to relevant laws, rules, and regulations. The report must also document actions taken to correct any violations or deficiencies that are identified.

does not have continual, internal mechanisms in place to monitor and review its operations and programs, such as an audit committee or internal audit function as recommended by internal control standards. In addition, top NMB management officials do not take operational responsibility for addressing the findings of the independent auditors. As a result, problems identified in those auditors' reviews of program and management areas may not be revisited for 5 or more years, when that topic again comes up for review.

NMB does not have a statutory Inspector General (IG) to fill this oversight role.⁶⁶ In comparison, two other federal agencies with similar missions, the National Labor Relations Board (NLRB) and the Federal Labor Relations Authority (FLRA), have statutory IGs. NMB's independent auditors said they can only perform the reviews NMB hires them to do. In contrast, an IG can target any area of an agency's operations for an audit, inspection, or investigation. The House version of the FAA Modernization and Reform Act of 2012, H.R. 658, contained a provision that would have authorized the IG of the Department of Transportation to review NMB operations, issue findings and recommendations to address any identified problems, and keep the chairman of the NMB Board and Congress informed on agency efforts to address them. The bill also would have authorized \$125,000 in Department of Transportation appropriations for each of fiscal years 2011 through 2014 to cover these services. However, these provisions were removed from the bill during conference and therefore were not enacted.⁶⁷

Lack of Data on Rail Arbitration Cases

NMB has long struggled with a large volume of railroad grievance arbitration cases related to minor disputes. At the beginning of fiscal year 2000, there were 11,237 pending arbitration cases. More recently, NMB has taken steps to reduce the number of pending cases. For example, it now performs annual checks to identify cases the parties no longer want

⁶⁶The Inspector General Act, as amended, established Offices of Inspector General to serve as independent, objective offices within certain federal departments and entities to promote economy, efficiency, and effectiveness as well as prevent or detect fraud and abuse. Neither this law nor any other law created an IG for NMB.

⁶⁷There have been other efforts to provide NMB with IG services. NMB officials approached FLRA about sharing their IG, and a bill currently pending before the House of Representatives would require FLRA's IG to supervise, direct, and control audit and investigative activities (relating to such audits) pertaining to programs and operations within NMB. Inspector General Improvement Act of 2013, H.R. 314, 113th Cong. § 2(e) (2013)

heard and remove them from the list of pending work. In addition, NMB has been exploring using alternatives to arbitration to resolve minor disputes, such as grievance mediation. In fiscal years 2008, 2009, and 2010, Congress provided NMB with supplemental appropriations (\$657,000, \$560,000, and \$29,000, respectively) to reduce the arbitration backlog.⁶⁸ By the beginning of fiscal year 2013, NMB had reduced the number of pending cases to 2,084. However, rail carriers and unions filed more than 3,500 new cases in fiscal year 2012.

While stakeholders told us NMB has done a good job reducing the number of these pending rail cases, several also said they are unable to get an arbitrator assigned in a timely manner. 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. For example, we reviewed several arbitration decisions issued in 2012, including a “time claim” case that involved a group of employees requesting a day’s pay because their employer had violated a term of their collective bargaining agreement. Another case involved an employee who believed she was wrongfully suspended because of an alleged violation of the employer’s code of conduct policy. Although NMB has some information from the parties on the types of claims filed, officials said they do not track or analyze these data, nor prioritize cases by type of case or level of urgency. NMB assigns arbitrators to cases in the order the requests are received. Since NMB apportions its annual funding for arbitrators into 12 monthly allocations, once NMB officials have obligated all funds for a month, they will not fulfill requests to assign arbitrators to additional cases. As a result, according to rail union and carrier officials we interviewed, some disputes are not heard in a timely manner. For example, they said cases involving a dispute over whether a rail employee was improperly fired are sometimes delayed because an arbitrator is not assigned immediately.

Several former board members and a senior NMB official told us that the large number of rail grievance arbitration cases submitted to NMB occurs because the parties do not bear any of these costs and so lack a financial incentive to only file claims with merit. Unique among labor relations agencies in the federal government, NMB uses federal funding to pay the

⁶⁸ Congress appropriated another \$500,000 in fiscal year 2000, but this was provided specifically to raise NMB’s arbitrators’ daily rate from \$220 to \$300, where it currently stands.

fees and travel expenses for an arbitrator to resolve minor disputes between a specific employer and a union, in accordance with the requirements of the RLA. In the airline industry, as with all other private sector industries and the federal government, the parties pay for the arbitrator and all other arbitration expenses.⁶⁹

In 2004, to encourage more efficient use of its resources and citing its authority under the RLA, NMB issued a notice of proposed rulemaking to, among other things, establish application fees for certain grievance arbitration services, including, for example, a \$50 fee for certification of an arbitrator to a board.⁷⁰ The preamble to the proposed rule noted that these fees, which represented only a small portion of the actual costs of providing the respective services, would help reduce the large numbers of pending cases by encouraging parties to only file and proceed with those with merit and to consolidate as many grievances as possible. However, NMB did not cite any data on the numbers and types of rail arbitration cases that compose the backlog as justification for its proposal. In January 2005, at an NMB hearing on the proposed rule, an organization representing rail carriers expressed support for fees, stating that the current system imposes few restraints on the pursuit of any grievance, regardless of its merit. The organization said that requiring parties in the rail industry, like those in all other industries, to internalize the costs of arbitration would result in a more effective and efficient system. However, numerous union stakeholders voiced opposition to fees, asserting that NMB is required by the RLA to cover these costs and NMB does not have authority under the Act to charge fees. Union representatives also said that when the parties jointly crafted the RLA, the unions gave up their right to strike over minor grievances in exchange for government-financed arbitration. Among other concerns, opponents said fees would discourage unions and individual employees from pursuing valid arbitration of minor disputes because costs are more difficult for them to bear than they are for carriers. In addition, more than 125 members of Congress signed a letter urging NMB to reconsider the proposed rule. NMB did not issue a final rule regarding fees.

⁶⁹Data provided by the Federal Mediation & Conciliation Service show private arbitration costs of nearly \$5,000 per case, on average, in fiscal year 2012, including the arbitrator's per-diem fees and expenses. NMB officials estimated their average cost per case at \$600 (per diem and expenses only).

⁷⁰Administration of Arbitration Programs, 69 Fed. Reg. 48,177 (August 9, 2004)(to be codified at 29 C.F.R. pt. 1210).

Although NMB did not finalize its proposed rule to establish fees, the agency has taken other actions to manage its grievance arbitration workload. In a memo issued June 10, 2013, during the course of our review, NMB's Chief of Staff discussed month-to-month delays for rail arbitration cases and said cases that are not assigned an arbitrator in a given month for lack of funds no longer have to be re-filed the following month. Instead, those cases will now go to the top of a wait list for the next month. The memorandum stated that this change, assuming the parties do not flood the system with requests, should mean that no case will go more than 2 months without being assigned to an arbitrator.

NMB Has Responded to Industry Changes and Stakeholder Disagreements in Conducting Elections

NMB Has Addressed Challenges in Conducting Representation Elections

Both NMB officials and stakeholders said the agency has addressed challenges presented by railroad and airline industry changes, such as mergers, in conducting its representation work. Because union representation of rail and air employees is based on their inclusion in a craft or class systemwide and not by worksite, some recent elections overseen by NMB have involved tens of thousands of employees in multiple locations. For example, a 2010 merger of United and Continental airlines prompted an election in 2011 involving 24,000 eligible flight attendants. In comparison, elections at NLRB typically involve a single worksite and substantially smaller numbers of voters. In fiscal year 2012, more than 88,000 rail and air employees were involved in NMB representation elections. NMB officials said mergers and bankruptcies in recent years, primarily in the airline industry, have taxed agency resources. While NMB can set longer timeframes for large elections, officials said they must meet those deadlines with the same number of NMB staff. Senior officials in NMB's Office of Legal Affairs said they borrow other NMB employees, such as mediators, to assist with large elections. At least one union official expressed concern that when mediators are drafted to assist with representation, their work in mediating collective bargaining agreements can be delayed. While the size of elections may have increased, the number of representation cases

handled annually by NMB's Office of Legal Affairs has remained constant at about 45 cases for each of the last 10 years.⁷¹

NMB has also made changes in its representation work as a result of evolving technology, but some key steps remain labor intensive. Moving to online voting in 2007 was a challenge to implement, NMB officials said, but stakeholders were supportive. NMB instituted online voting after several years of planning. NMB also implemented e-filing for election applications and other required documents in September 2009. However, authorization cards submitted by unions to demonstrate sufficient interest to hold an election are still authenticated by NMB staff by hand. They must compare the signature on the authorization card to a signature sample provided by the carrier. One NMB attorney told us she has had instances when she checked more than 4,000 cards, and NMB officials said all NMB staff check cards when necessary.

NMB has also faced challenges in its investigations of alleged interference, influence, or coercion as communications about elections increasingly occur via the Internet. The use of social media, hyperlinks to online voting websites, and other evolving communication tools have expanded the agency's investigative responsibilities. An NMB attorney said one investigation occurred after airline employees posted photos of themselves holding confidential voting materials on Facebook. Another case required an investigation of potential coercion when employees hosted voting parties that were shared on YouTube. Sharing voting materials and voting in groups violates federal law, NMB officials said. In February 2008, NMB issued a policy prohibiting hyperlinks to an online voting site from any website other than its own. For example, in 2011, while investigating an allegation of interference after an airline merger election, NMB found that posting a hyperlink on a union website to the voting website might constitute interference because, while it did not compromise the voting process, it had the potential to reveal a voter's identity through his or her Internet identification. As a result, the union's

⁷¹NMB's General Counsel said representation cases involve not only elections but also include other representation activities such as referrals from NLRB, interference investigations, and others.

win in the election stood but NMB shortened the timeframe for holding another election from 2 years to 18 months.⁷²

Disagreement during Past Rulemaking on Union Elections Created Challenges

NMB in 2010 changed its rules for certifying a union in an election,⁷³ and several stakeholders told us and a former NMB board member wrote at the time that this process harmed the perception of NMB as a nonpartisan arbiter and caused disagreement. Prior to the change, which was effective July 1, 2010, employees who did not vote in an election were counted as having cast a vote against certifying the union under NMB regulations. After the change, only votes cast are counted in determining whether a union has achieved the majority needed to be certified as the employee representative.

Several stakeholders said NMB was hasty and lacked input in making a change that overturned 75 years of precedent. NMB received almost 25,000 comments in response to its notice of proposed rulemaking.⁷⁴ NMB held a public hearing on December 7, 2009, on the proposed rule. While a union official said that NMB used a deliberative process for making the rule change, one management stakeholder said NMB should have alerted them that such a change was being considered far in advance of a hearing. In addition, an airline carrier official said that because the change was suggested in a letter to NMB from one large union, and this union's involvement was not initially disclosed by NMB officials, some stakeholders were suspicious about NMB's motives for changing the rule. In the past, according to another official from a regional air carrier, NMB involved stakeholders before making significant changes. For example, the official said NMB consulted with stakeholders over several years before moving to online voting. A railroad official said the

⁷²NMB officials said if they find a violation of election rules, the election of a union may still stand, but NMB may shorten the 2-year timeframe before another election can be held.

⁷³Representation Election Procedure, 75 Fed. Reg. 26,062 (May 11, 2010) (codified at 29 C.F.R. pts. 1202 and 1206).

⁷⁴NMB reported that nearly 98 percent of the comments received in response to the notice of proposed rulemaking were: (1) very general statements; (2) personal anecdotes of experience or participation in NMB's election procedures; or (3) identical or nearly identical "form letters" or "postcards" sponsored by various constituent groups.

process was very damaging to NMB's reputation for neutrality. However, another railroad official said trust in NMB remains intact.⁷⁵

Despite concerns, NMB officials reported that the percentage of elections resulting in certification of a union has remained relatively constant in the years before and after NMB's 2010 rulemaking. NMB data for the 11 fiscal years (2000 to 2010) before the rule change show that, on average, about 61 percent of all elections resulted in certification of a union. NMB data for the 3 fiscal years after the change (2011 to 2013) show that, on average, about 62 percent of all elections resulted in certification of a union. At the time of our report, figures for fiscal year 2013 were incomplete. In addition, these percentages are not weighted to account for the size of the elections, nor controlled for other factors that can affect the outcome of an election, for example, job market conditions.

Some stakeholders also wanted NMB, as part of the 2010 rulemaking, to clarify the process for decertifying, or removing, a union representative. The RLA does not specify a decertification process, and NMB offers minimal guidance on its website on steps to remove an employee representative. In its preamble to the 2010 rule, NMB noted that, while not as direct as some commenters might like, the existing election procedures allow employees to "rid themselves of a representative," and that the 2010 change further gives these employees the opportunity to affirmatively cast a ballot for no representation. However, an airline carrier official and a former board member said the process in place remains ineffective and highly confusing. For example, a ballot currently may contain two options that are each a vote for no representation: "no representative," and an applicant who is on the ballot as a "straw man" who intends, if elected, to step down so as to remove representation for the craft or class. This applicant seeking removal of representation has to collect sufficient authorization cards to prompt an election in order for the craft or class to make this change. A former NMB board member said there is the potential for votes opposed to union representation to be split by votes for "no representative" and for a straw man. The result is that these vote counts will not be consolidated in favor of decertification, which can then happen only if either the "no representative" or straw man receives a majority of the votes cast. When asked whether NMB has

⁷⁵The rulemaking occurred as Delta and Northwest airlines were in merger discussions, and some stakeholders viewed its timing as a politicized effort to ensure unions would survive the merger.

developed written guidance to walk parties through the process should they wish to drop union representation, attorneys in the Office of Legal Affairs said adequate guidance is available on NMB's website and in the NMB Representation Manual.

According to stakeholders we interviewed, NMB improved its outreach when issuing a more recent rule in 2012.⁷⁶ The final rule, published in December 2012, made some changes to NMB's representation process to conform with requirements in the FAA Modernization and Reform Act of 2012.⁷⁷ For example, the Act amended the RLA to require that an application as part of a merger and requesting an organization or individual be certified for representation must be supported by not less than 50 percent of the employees in a the craft or class.⁷⁸ Previously, the NMB Representation Manual required a 35-percent showing when a group of employees not already represented by a union wished to have an election. In its notice of proposed rulemaking, NMB explicitly sought comments on whether the 50-percent requirement applied to mergers.⁷⁹ One stakeholder we interviewed said NMB did a better job of reaching out to stakeholders in the most recent rulemaking, and an airline carrier official characterized this as a positive "returning to form" for NMB.

Conclusions

The National Mediation Board is a small agency with a vital role in facilitating labor relations and helping avoid work stoppages in two key transportation sectors: the railroads and airlines. To better fulfill this role, NMB has in recent years instituted organizational changes, technology upgrades, and several new management practices. However, its initiatives are not guided by a robust strategic planning process, which—if done well—provides the basis for everything an organization does. Without such a process that includes mechanisms for obtaining stakeholder and congressional input, NMB lacks assurance that its limited resources are effectively targeted toward the highest priorities. Further,

⁷⁶Representation Procedures and Rulemaking Authority, 77 Fed. Reg. 75,543 (Dec. 21, 2012)(to be codified at 29 C.F.R. pt. 1206).

⁷⁷Pub. L. No. 112-95, 126 Stat. 11.

⁷⁸*Id.* § 1003, 126 Stat. 147.

⁷⁹NMB determined in the 2012 rule that the Act's 50 percent requirement did apply to merger-related elections. 77 Fed. Reg. 75,543, 75,544.

without performance goals needed to gauge agency progress, NMB, Congress, and stakeholders lack the information needed to improve management practices and better link resources to results at the agency.

Implementing cost-effective and appropriate internal controls can help an agency achieve results and minimize operational problems. While NMB has controls in key management areas, such as financial management, there are challenges. For example, without a formal mechanism to track and promptly resolve deficiencies identified in reviews of its program and management areas, NMB misses opportunities to improve performance and mitigate risks. NMB's failure to follow federal requirements for recent upgrades of its information technology systems and equipment means NMB cannot ensure the best use of its limited resources or the protection of sensitive information. A lack of strategic workforce planning means NMB does not have assurance that its staff will continue to possess the skills necessary to the agency's mission and receive the training they require, particularly to meet challenges presented by the impending retirements of senior staff.

NMB faces additional management issues. There is minimal internal programmatic oversight of its activities, for example, by an Inspector General, to identify management challenges and to hold it accountable to Congress and the public. NMB also struggles to efficiently manage grievance cases in the rail industry, partly because the parties do not pay for the arbitrator and thus lack an incentive to only file and progress cases with merit. NMB has considered ways to increase efficiency, such as charging application fees for its arbitration services, and has undertaken other efforts, such as conducting reviews of pending cases. However, it lacks data on the types of grievances that are filed to inform its deliberations on how to more efficiently manage the process. If NMB does not address this demand on its limited resources, it may again face a growing and unmanageable backlog of arbitration cases.

Matter for Congressional Consideration

To provide for independent audit and investigative oversight of NMB, Congress should consider authorizing an appropriate federal agency's Office of Inspector General to provide such oversight.

Recommendations for Executive Action

In order to improve NMB's planning and make the most effective use of its limited resources, we recommend that the Chairman of the National Mediation Board take the following seven actions:

1. 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.
2. Develop, and include in its performance plan, performance goals and measures that contain required elements to demonstrate results.
3. 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.
4. Develop and fully implement key components of an information security program in accordance with FISMA.
5. Establish a privacy program that includes conducting privacy impact assessments and issuing system of record notices for systems that contain personally identifiable information.
6. 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.
7. 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.

Agency Comments and Our Evaluation

We provided a draft of this product to the National Mediation Board (NMB) for comment. We also shared a draft with the Office of Management and Budget (OMB) and Office of Personnel Management (OPM). OMB and OPM had no comments. In its written comments, reproduced in appendix II, NMB noted that it will review and address all of the recommendations and discussed ways that the agency plans to address them. NMB also provided technical comments that were incorporated, as appropriate.

Although our matter for congressional consideration was not directed to NMB, the agency suggested that having another federal agency's Office of Inspector General provide oversight of NMB would be redundant with GAO's biennial audits and evaluations, which were mandated by the FAA Modernization and Reform Act of 2012. As we have previously reported, GAO and agency Inspectors General (IGs) have complementary, rather than duplicative, roles. The IGs have been on the front line of combating fraud, waste, and abuse within their respective agencies, and their work has generally concentrated on audits and investigations of specific program-related issues of immediate concern. We continue to believe that, in addition to the periodic oversight provided by GAO and the annual audits of NMB's financial statements by independent public accountants, an IG office assigned with the responsibility of providing ongoing audits and investigations of NMB and its operations would result in more effective oversight.

Regarding our first recommendation to establish a formal strategic planning process, including a formal process to obtain congressional and stakeholder input, NMB noted that it would replace its current strategic plan by February 2014 using guidelines we outlined in this report. These guidelines include soliciting comments on a draft strategic plan from Congress and stakeholders. In its comments, NMB asserted it currently has formal avenues to obtain stakeholder input and listed several stakeholder groups and industry conferences. While we acknowledge in our report that NMB consults with such groups, representatives of key groups told us they are not currently involved in NMB's strategic planning process. Formally involving stakeholders and Congress in the strategic planning process is critical for ensuring that NMB's efforts and resources are targeted to the highest priorities. Moreover, such consultations should occur during the development of a strategic plan, not after it is developed. We have long noted the importance of the executive branch considering Congress a partner in shaping goals at the outset. If an agency waits to consult with relevant congressional stakeholders until a strategic plan has been substantially drafted and fully vetted, it foregoes important

opportunities to learn about and address early on specific concerns that could be critical to successful implementation of the plan.

NMB noted, with respect to our second recommendation to develop performance goals and measures, that it will include such goals and measures in its new February 2014 strategic plan. It is also important for NMB to include these goals and measures in its annual performance plans, as required by law, which can be consolidated with the agency's congressional budget submissions or annual performance reports, per OMB guidance. These documents are updated on an annual basis—while strategic plans are updated every 4 years—and allow for greater transparency in reporting NMB's progress toward meeting its goals. NMB also indicated it will soon develop and publish a plan to address our third recommendation to establish a mechanism to ensure prompt resolution of findings and recommendations by independent auditors and clearly assign responsibility for follow-up to agency management.

Regarding recommendation four to develop and fully implement components of an information security program, NMB stated that it was meeting its information security requirements through the Federal Risk and Authorization Management Program (FedRAMP) and that the program is compliant with the Federal Information Security Management Act of 2002 and based on National Institute of Standards and Technology guidelines. NMB further discussed its plans to create standards for security and that they plan to be fully FedRAMP compliant by June 2014. We acknowledge in our report some of the actions NMB has taken to comply with federal information security program requirements but also noted weaknesses with the implementation of these requirements. While the FedRAMP assessment process is compliant with federal information security program requirements, for those FedRAMP services NMB is using, that does not diminish NMB's responsibility with regard to the development and implementation of its information security program, including the development of its own requirements. For example, NMB should ensure that it completes its draft policies and procedures, provides information security training to its users and contractors, and updates its disaster recovery and continuity of operations plans and procedures. We continue to believe that our recommendation to develop and fully implement components of an information security program is still valid.

In response to recommendation five regarding the establishment of a privacy program, NMB stated that it holds very little personally identifiable information and that it has or is in the process of contracting with other agencies to ensure that they handle virtually all of NMB's personally

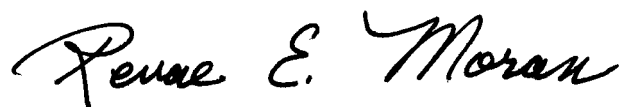
identifiable information. However, as we noted in our report, NMB has not developed policies or procedures that discuss privacy protections for the personally identifiable information it currently holds, and does not comply with federal requirements to conduct privacy impact assessments and issue system of records notices if deemed necessary. Thus we believe our recommendation is still valid.

In commenting, NMB did not identify any specific actions it plans to take to address our sixth recommendation to develop a strategic workforce plan. NMB stated that the board and Chief of Staff regularly review staffing and personnel issues and plan for succession, but the agency's relatively small workforce means NMB is less able to use workforce planning. NMB also discussed its training process, which we describe in detail in the report, and said no request for training has been refused in the past 3 fiscal years. We continue to believe a strategic workforce plan is essential for every federal agency, regardless of its size. Such a plan helps ensure an organization's human capital program is aligned with its mission and programmatic goals, and that it has long-term strategies for acquiring, developing, and retaining staff to achieve those goals.

Finally, in commenting on recommendation seven to analyze data on the types and disposition of rail grievance arbitration cases to better inform its management of those processes, NMB officials stated that they plan to collect additional data on the types of cases they receive from all arbitration boards and make the information available on the agency's website. We reiterate the importance of analyzing this information in order to better manage this process. NMB also cited its efforts to reduce the backlog, noting that the number of arbitration cases pending at the end of fiscal year 2012 was the lowest in 5 years. However, as we note in the report, there were 2,084 claims pending at the beginning of fiscal year 2013, which is still significant, and more than 3,500 new claims were filed in fiscal year 2012. We encourage NMB to maintain its focus on managing the arbitration process and continue to consider options, such as a fee structure, for achieving a more efficient use of resources.

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

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

A handwritten signature in black ink that reads "Revae E. Moran". The signature is written in a cursive, flowing style.

Revae Moran,
Director, Education, Workforce, and Income Security Issues

Appendix I: Scope and Methodology

Overall Approach

To conduct our work, we assessed how the National Mediation Board (NMB) carried out selected key management functions—strategic planning and performance measurement, financial management, information technology, human capital, and procurement—we have found are critical to creating and sustaining high-performing organizations.¹ We also assessed how NMB is addressing challenges in one of its three program areas—oversight of union representation elections. Most of these areas were specifically identified in the FAA Modernization and Reform Act of 2012 as required subjects of our review. We also selected strategic planning and performance measurement for our review because we have found that an agency’s strategic planning effort is the most important element in results-oriented management.²

To perform our work, we reviewed relevant federal laws and regulations and key NMB documents, such as the agency’s most recent strategic plan and annual report, policies and procedures for NMB’s three program areas (mediation, arbitration, and representation), board member briefing book, and delegation orders for duties of board and staff for fiscal years 1990 through 2013. We also assessed NMB’s management plans, policies, and practices in financial management, information management and security, human capital, and procurement using GAO’s Standards for Internal Control in the Federal Government³ and other criteria developed by GAO in prior work for these management areas, as described later in this appendix. We identified key practices from these criteria and assessed whether NMB is following these practices (NMB is taking appropriate actions and has a formal plan, policy, or other document), partially following (is taking some actions but does not have a formal plan or policy and/or some additional steps must be taken to consider this

¹Based on experience in examining a wide range of government programs, we have found that effective performance of specific management functions—strategic planning, budget formation and execution, organizational alignment and control, performance measurement, human capital strategies, financial management, information technology, and acquisition—are key to creating and sustaining high-performing organizations. See GAO, *Determining Performance and Accountability Challenges and High Risks*, [GAO-01-159SP](#) (Washington, D.C.: November 2000).

²GAO, *Agencies’ Strategic Plans under GPRA: Key Questions to Facilitate Congressional Review*. [GAO/GGD-10.1.16](#) (Washington, D.C.: May 1, 1997).

³GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

practice implemented), or minimally following (NMB is taking little or no action to address this particular practice).

We also interviewed officials at the Office of Management and Budget (OMB) and the Office of Personnel Management (OPM) to determine how these agencies provide oversight and guidance to NMB, as well as to obtain officials' perspectives on NMB's management strengths and challenges. In cases where other entities had conducted recent work in any of the management functions we reviewed—such as financial management—we did not duplicate that work. For example, we obtained the most recent nine financial statement reports NMB provided to us, but we did not independently assess the findings in the audits. In addition, we reviewed but did not duplicate the work performed by NMB's independent auditors in the six most recently issued internal control reviews of NMB program areas:

- Report on Review of Internal Controls Over Representation Functions (fiscal year 2005)
- Report on Review of Internal Controls Over Alternative Dispute Resolution (ADR) Services (fiscal year 2006)
- Report on Review of Internal Controls Over Mediation Services (October 2006-September 2007)
- Report on Review of Internal Controls Over Personnel/Payroll (April 2008-March 2009)
- Report on Review of Internal Controls Over Arbitration Services Functions (April 2009-March 2010)
- Report on Review of Internal Controls Over Procurement (October 2010-September 2011)

To gain additional perspectives on NMB's program and management functions, we interviewed officials at the two primary federal labor relations agencies that cover labor relations in the private sector. We interviewed senior officials from the Federal Mediation & Conciliation Service to obtain information on its strategic planning and performance measurement efforts, human capital and training practices, and its role in mediation and arbitration. We also interviewed senior officials from the National Labor Relations Board to obtain information on strategic planning and performance measurement, human capital practices, and its role in overseeing union representation elections. We interviewed the chairman of a third labor relations agency—the Federal Labor Relations Authority, which covers labor relations in the federal government—but the primary purpose of the interview was to obtain this individual's perspective as a former NMB board member.

In addition, we conducted in-depth interviews with current and former NMB officials, including all senior managers (Chief of Staff, General Counsel, and the directors of the Office of Administration, Arbitration Services, and Mediation and ADR Services); current board members; and all former board members who served from 2000 to 2012. We interviewed several rail and air industry experts, identified by issue area experts within GAO and from our literature review. We also interviewed representatives from key rail and air labor and management groups, including Airlines for America, Regional Airline Association, National Railway Labor Conference, AFL-CIO Transportation Trades Department and affiliated rail and air unions, and the International Brotherhood of Teamsters. In addition, we interviewed representatives from the National Association of Railroad Referees, an association representing railroad arbitrators. We also interviewed members of NMB informal advisory groups, including the Dunlop II Committee and Section 3 Subcommittee, which made recommendations to NMB on mediation and arbitration issues, respectively. Finally, to gain a better understanding of the types of rail grievance arbitration cases that NMB funds, we reviewed a judgmental sample of several arbitration cases available on NMB's website that were decided by arbitration boards in calendar year 2012.

We conducted this performance audit from September 2012 through December 2013 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.

Strategic Planning and Performance Reporting

We reviewed NMB's most recent 5-year strategic plan (fiscal years 2011-2016), its most recent annual Performance and Accountability Report (fiscal year 2012), and fiscal year 2014 congressional budget justification documents. We also compared NMB's strategic planning and performance planning and reporting practices with key requirements in the Government Performance and Results Act of 1993 (GPRA), the GPRA Modernization Act of 2010 (GPRAMA), and OMB performance

guidance for federal agencies.⁴ In addition to these federal requirements, we assessed NMB's plans and practices against leading practices identified in prior GAO work.⁵

Financial Management

We also obtained NMB's financial statement audits for fiscal years 2004 to 2012, auditors' management letters to NMB for fiscal years 2008, 2010, 2011, and 2012,⁶ and the six most recently issued internal control reviews of NMB program and management areas, as discussed earlier. We also interviewed NMB's independent auditors about their processes, findings, and recommendations for NMB. We did not independently assess the findings in these financial statement audits and internal control reviews.

Information Technology

We interviewed NMB officials responsible for the overall planning and management of NMB's information management, security, and privacy. We collected and assessed information on NMB's information systems, including its plans, policies, and practices using the Federal Information Security Management Act, guidelines developed by OMB, guidelines developed by the National Institute of Standards and Technology, the Privacy Act and the E-Government Act. We also randomly selected and tested NMB user workstations for compliance with U.S. Government Configuration Baseline settings, randomly selected and reviewed NMB-issued smartphones and tablets for mobile device security settings, and reviewed NMB cloud computing security settings within its new cloud environment.

⁴For the purposes of this report, we focused mainly on GPRA and GPRAMA requirements related to federal agencies' strategic planning process, such as required timeframes, leadership roles, and performance planning. We assessed NMB's current strategic plan, annual performance plan, and annual performance report against federal requirements, but did not report on each of these requirements.

⁵GAO, *Internal Control Management and Evaluation Tool*, [GAO-01-1008G](#) (Washington, D.C.: August 2001); *Executive Guide: Effectively Implementing the Government Performance and Results Act*, [GAO/GGD-96-118](#) (Washington, D.C.: June 1996); [GAO/GGD-10.1.16](#); *The Results Act: An Evaluator's Guide to Assessing Agency Annual Performance Plans*, [GAO/GGD-10.1.20](#) (Washington, D.C.: April 1998); and *Managing for Results: Enhancing Agency Use of Performance Information for Management Decision Making*, [GAO-05-927](#) (Washington, D.C.: Sept. 9, 2005).

⁶NMB was unable to provide a copy of the fiscal year 2009 management letter.

Human Capital

We reviewed NMB's most recent human capital plans, policies, and key documents, including NMB's 2011 human capital management report to OPM, its 2009 human capital plan, and its 2006 succession plan. We also obtained information on the training NMB staff received in fiscal years 2011 and 2012. We reviewed OPM's fiscal year 2007 audit of NMB's human capital program, its most recent assessment (2011) of NMB's human capital management report, and the results of its 2012 Federal Employee Viewpoint Survey of NMB employees.⁷ We also reviewed data regarding NMB's human capital strengths (defined by OPM as the 10 survey items with the highest percent of positive responses) and challenges (the 10 survey items with the highest percent of negative responses). On the basis of our interview with knowledgeable OPM officials and review of prior GAO work concerning survey design, administration, and processing, we determined that the data were sufficiently reliable for the purpose of our review.

We assessed NMB's strategic workforce planning efforts against government internal control standards and key practices identified in prior GAO work.⁸ We focused on workforce planning in this review because it is a critical, foundational element of an agency's human capital program in that it helps ensure that agencies are making sound investments in the human capital issues that most affect their ability to achieve mission results.

Procurement

We reviewed NMB's procurement contracting cycle procedures as of March 2012 and NMB's independent auditors' most recent report on internal controls over the procurement function. We reviewed key documents, such as purchase requests and purchase orders, for the agency's recent acquisition of information technology equipment, including tablet computers, laptops, and smartphones. We assessed NMB's policies and practices against federal internal control standards

⁷OPM's Federal Employee Viewpoint Survey is a tool that measures employees' perceptions of whether, and to what extent, conditions characterizing successful organizations are present in their agencies. To assess the reliability of the survey data, we interviewed knowledgeable OPM officials and reviewed data reliability assessments performed in prior GAO work.

⁸GAO, *Human Capital: Key Principles for Effective Strategic Workforce Planning*, [GAO-04-39](#) (Washington, D.C.: Dec. 11, 2003).

and standards outlined in the Federal Acquisition Regulation and GAO's Framework for Assessing the Acquisition Function at Federal Agencies.⁹

Union Representation Elections

To describe NMB's process for overseeing employee representation elections and any challenges related to this process, we reviewed relevant federal laws and regulations and records related to NMB rulemakings on this subject, including proposed and final rules issued in 2010 and 2012. We also reviewed key documents, such as the National Mediation Board Representation Manual (effective March 25, 2013), notices and memorandums on revisions to phone and Internet voting instructions, electronic filing procedures for elections and challenges, frequently asked questions (revised 2013), and sample ballots. We obtained NMB officials' and stakeholders' perspectives on the challenges the agency faces in this process, as well as steps it has taken to address any challenges. For example, we reviewed select opinions issued by attorneys in the Office of Legal Affairs in fiscal years 2000 to 2013 to resolve challenges to voter eligibility and to allegations of election interference, influence, and coercion. We also reviewed and assessed the reliability of NMB data on the number and outcomes of union representation elections by fiscal year before and after implementation of the 2010 rule change. We compared NMB's figures to our own calculations of the annual number of and outcomes for representation elections for fiscal years 2000 to 2013 (before and after the 2010 rule change), and the percentages of total elections that resulted in certification of a union representative, using data for each fiscal year posted on NMB's website. In addition, we interviewed knowledgeable NMB officials responsible for compiling and reviewing these data. We determined the data were sufficiently reliable for the purpose of our review.

⁹GAO, *Framework for Assessing the Acquisition Function at Federal Agencies*, [GAO-05-218G](#) (Washington, D.C.: Sept. 1, 2005).

Appendix II: Comments from the National Mediation Board



NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

(202) 692-5000

November 1, 2013

Reva E. Moran, Director
Education, Workforce, and Income Security Issues
Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Ms. Moran:

This letter is provided in response to the Government Accountability Office draft report *GAO-14-5, National Mediation Board: Strengthening Planning and Controls Could Better Facilitate Rail and Air Labor Relations*, dated October 2013.

The National Mediation Board appreciates the opportunity to provide comments before final publication of the report, and the honest efforts of the GAO to conduct its congressionally mandated review. The Board will review and address all of the recommendations: the following specific comments relate to the major recommendations as presented in the report.

I. Matter for Congressional Consideration

To provide for independent audit and investigative oversight of NMB, Congress may wish to consider authorizing an appropriate Federal agency's Office of Inspector General to provide such oversight.

Consideration of an Inspector General to provide independent audit and oversight to the National Mediation Board is ultimately a congressional decision, but would seem to be somewhat redundant. The FAA Reauthorization Act of 2012 provides for biennial audits of all NMB functions by the GAO, and for more frequent audits upon request from Congressional committees. Such iterative GAO audits and oversight will provide more immediate and informed oversight than likely could be expected from an Inspector General located in another agency who has no experience with the NMB. NMB also has an independent audit of its financial statements, which has been unqualified for over a decade, included in every annual report to Congress, and the NMB has its independent auditor conduct separate rotating audits of specific NMB functions each year.

R. E. Moran
November 1, 2013

II. Recommendations for Executive Action

Recommendation #1: 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.

The NMB has in place a strategic planning process, and will have replaced the currently posted strategic plan with a plan developed using GAO's guidelines on or before the February, 2014, deadline. The Board would note that planning for the changes in the information and communication technology (ICT) environment have been pursued under an industry standard "sprint" process that discourages final specifications and standards and encourages the incremental development of ICT systems. This approach has resulted in successful implementation of changes in a timely manner, with significant cost savings to the agency.

The Board would also note that formal avenues to obtain stakeholder input exist in regular interaction with, among other organizations: The Dunlop II Independent Joint Labor-Management Committee, the Section 3 working group, the Arbitrator Forum, Passenger Rail Conferences, Regional Airline Conferences, the National Association of Railroad Referees Conference, the American Law Institute-American Bar Association meeting, the Association for Conflict Resolution conference, the American Bar Association Labor and Employment Law meeting, the Freight Rail Labor/Management Symposium, the Airlines for America (A4A) meeting, National Rail Labor Conference meetings, and an annual meeting with the Labor Relations Association of Passenger Railroads. We also plan to publish a draft strategic plan and solicit comments from stakeholders and Congress before finalizing the plan.

Recommendation #2: Develop and include in its performance plan, performance goals and measures that contain required elements to demonstrate results.

The new strategic plan will include performance goals and measures appropriate to the nature of the work done with parties in the airline and railroad industries, and in accordance with requirements of the Railway Labor Act.

Recommendation #3: 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.

The agency will promptly develop and publish a plan for addressing audit findings, placing responsibility in the Chief of Staff.

R. E. Moran
November 1, 2013

Recommendation #4: Develop and fully implement key components of an information security program in accordance with FISMA.

GAO suggested in its report that the agency was not properly managing and securing information systems and therefore was not Federal Information Security Management Act of 2002 (FISMA) compliant. GAO, however, failed to note in its report that the NMB is meeting its information security requirements through the Federal Risk and Authorization Management (FedRAMP). FedRAMP is an assessment process initiated by agencies or cloud service providers which is FISMA compliant and based on National Institute of Standards and Technology 800-53, rev3.

The agency is operating under draft policies and extensions of our previous information security policies while in the process of what we think is the first full conversion to cloud applications in the Federal government. In this process, we are beginning to create standards for security in a cloud environment. Our target goal is to be fully FedRAMP compliant with all of our new systems by June of 2014, with interim milestones of: (1) internal review and development of security action items (POAMS) throughout the remainder of calendar 2013; (2) work with a third party auditor early in calendar 2014 to review our security systems, culminating in; (3) submitting for FedRAMP approval in April or May of 2014. These actions are well within guidelines supplied and approved by FedRAMP, and therefore address FISMA and other requirements that GAO questioned.

Recommendation #5: Establish a privacy program that includes conducting privacy impact assessments and issuing a system of record notices for systems that contain personally identifiable information.

The agency holds very little personally identifiable information (PII). The NMB has or is in the process of contracting with the Bureau of Public Debt (BPD) and the Department of Interior (DOI) to have virtually all documents with personally identifiable information handled outside the agency and within the security boundaries established by the contractors. Additionally, the agency's use of USAJOBS to handle information related to job applicants further removes PII from the agency's control. When the transfer is complete to DOI and BPD, the NMB will review the contractors security systems and integrate them into a new information security plan for the NMB. Following these actions, in the unlikely event that the agency still finds it holds PII in its systems, an impact assessment and records notice for any systems holding PII will be issued.

R. E. Moran
November 1, 2013

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

Recommendation #6: 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.

The Board Members and the Chief of Staff regularly review staffing and personnel issues, forecasting needs and planning for succession. With a total workforce of 51 individuals, most of whom work in single-occupancy jobs, there is by necessity less ability to use internal workforce planning to manage succession.

However, training, as a strategy for workforce development, has in the tenure of the current Chief of Staff been made a high priority. The approval of training funds has been centralized in the Chief of Staff, each employee has been required to develop an individual development plan (IDP), each department has been required to develop a departmental training plan, and priorities have been set for training funds (remedial training as the highest priority when the need exists, with current career development and future career development as ongoing priorities).

Due to innovative training programs and partnerships, no request for training has been refused during the past three fiscal years. In FY 2013, agency staff attended 96 formal training events (this does not include informal training offered to mediators and others internally and by guests at mediator meetings and staff meetings). Of the 96 formal training events, 34 (35%) were attended at no cost to the agency. Additionally, the agency has now developed standard mandatory mediation and negotiation training for incoming mediators, and has made attendance at dispute resolution conferences a routine part of each mediator's IDP.

Recommendation #7: 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.

For reference, the agency started planning for changes in the Section 3 (arbitration) process in the early 2000's. Those changes have been implemented, largely within the past five years, and have resulted in an arbitration case load for which there is, essentially, no backlog. In fact, the NMB processed almost 4000 cases in FY 2012, and the number of cases pending at the end of FY 2012 as noted in NMB's annual report was the smallest number over the past five years.

The NMB has data on the types of cases submitted by the National Railroad Adjustment Board (NRAB), based upon the categories they have established and use in their submissions. That information accounts for the vast majority of grievance arbitration cases, and is available on the NMB web site. We plan to collect similar data for Public Law Boards

R. E. Moran
November 1, 2013

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Mediation Board**

(PLB) and System Boards of Adjustment (SBA), and the agency will make that information available on its web site when that process is complete.

Fees for arbitration services were offered as one reform through a notice of proposed rulemaking and public comment process. Feedback from the parties generally indicated little enthusiasm for a fee structure, but we appreciate GAO's suggestion to continue considering that option.

If you have any questions or if you require further discussion of any of the comments contained in this response, please have your staff contact the NMB Chief of Staff, Daniel Rainey, at rainey@nmb.gov or 202-692-5015.

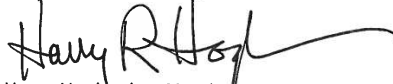
Sincerely,



Linda Puchala, Chairman
The National Mediation Board



Nicholas Geale, Member
The National Mediation Board



Harry Hoglander, Member
The National Mediation Board

R. E. Moran
November 1, 2013

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Revae Moran, (202) 512-7215, moranr@gao.gov

Staff Acknowledgments

In addition to the contact named above, Gretta Goodwin (Assistant Director), Rachael Chamberlin, Susan Aschoff, Alison Grantham, Shirley Abel, Alexander Galuten, Anjalique Lawrence, James Rebbe, Shaunyce Wallace, and Candice Wright made significant contributions to this report. In addition, key support was provided by Edward Alexander, Jr.; Elizabeth Curda; Benjamin Licht; Steven Lozano; and Walter Vance.

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