

Congress of the United States
House of Representatives
Washington, DC 20515-2306

February 20, 2024

Shalanda Young
Director
Office of Management and Budget
725 17th St., NW
Washington, D.C. 20503

Dear Director Young:

On January 24, 2024, the Office of Management and Budget (OMB) utilized emergency measures to approve and expedite the Energy Information Administration (EIA) request to subject the American Bitcoin mining industry to a new, mandatory information collection regime. The OMB's emergency approval authority is to be utilized when there is an imminent threat to public safety, and I am writing to express my deep concern regarding the OMB's usage of these authorities in this instance, as Bitcoin miners do not present a threat to public safety.

Bitcoin mining firms play an integral role in maintaining and securing the Bitcoin network, which is an open and permissionless network upon which anyone can transact without the permission of intermediaries. To its core, this technology embodies American values, but regardless, technology policy must be politically neutral. Bitcoin miners are simply computers that use electricity, a majority derived from sustainable sources in the United States, to validate and settle transactions on the blockchain.¹ Just like data centers use electricity to maintain the internet at large, Bitcoin miners use electricity to maintain the Bitcoin network.

The EIA claims to be "a policy neutral agency that does not create, implement, enforce or comment on policy."² Nonetheless, with the assistance of the OMB, the EIA seems to be enforcing the Biden administration's regressive policy position against energy consumption and applying it subjectively to the digital asset industry. Specifically, in "proving" to the OMB that cryptocurrency mining is a threat to public safety, the EIA cited, as evidence, its concern that Bitcoin's price increase will lead to more mining activity, and in turn increase electricity consumption. Additionally, the EIA cites a "major cold snap" in the U.S. and references an instance unrelated to Bitcoin mining from 2018 in Plattsburgh, New York, where inclement

¹ Bitcoin Mining Council, "Bitcoin Mining Council Survey Confirms Year on Year Improvements in sustainable Power and Technological Efficiency," available at <https://bitcoinminingcouncil.com/bitcoin-mining-council-survey-confirms-year-on-year-improvements-in-sustainable-power-and-technological-efficiency-in-h1-2023/>

² Daniel Kuhn, "The U.S. Government Seems to Be Closing in on Bitcoin Mining," *CoinDesk*, (February 2, 2024), available at <https://www.coindesk.com/consensus-magazine/2024/02/02/the-us-government-seems-to-be-closing-in-on-bitcoin-mining/>

weather affected system operations.³ The filing does not mention crypto mining's unique ability to curtail load during peak hours or inclement weather. Respectfully, these examples are insufficient for the OMB to authorize the EIA to circumvent the Paperwork Reduction Act's outlined process for information collection, which requires public comment.

Furthermore, this survey encompasses 82 individual cryptocurrency mining firms and requires detailed reporting of electricity consumption, energy providers, chip types, and other proprietary information. The scope of this survey suggests the administration may be attempting another avenue to implement Scope 3 climate policies, which received overwhelmingly negative public feedback when proposed by the SEC.

While the Paperwork Reduction Act does permit the OMB to approve information collection requests without the agency first publishing a public comment period, the agency must first prove to the OMB: "(i) Public harm is reasonably likely to result if normal clearance procedures are followed; (ii) An unanticipated event has occurred; or (iii) The use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed."⁴ I understand that the EIA wants to build a new standard information collection rule to apply specifically to cryptocurrency miners. While I disagree with the EIA on this policy objective, I have significant concerns regarding the danger of the OMB abusing its emergency approval authority in the Paperwork Reduction Act. Doing so will work to the detriment of our nation's system of checks and balances.

To assist my office's understanding of this emergency survey further, we request that you provide written responses to the following questions:

1. The OMB approved this emergency request in recognition that this emergency collection is "experimental and provisional" with the goal of creating a new information collection reporting requirement. That said, OMB has not explained why normal clearance procedures were not followed.
 - a. How did the EIA prove to the OMB that the OMB had good cause to waive normal clearance procedures for this information collection?
 - b. What criteria did the OMB use to determine the legitimacy of the "emergency" described by the EIA regarding this survey?
2. Is the OMB's decision to authorize the EIA information collection request consistent with past decisions to fast-track other information collection requests?
3. Information gathered by this survey will likely contain proprietary information. Did the EIA have to disclose to the OMB how it plans to ensure the protection of this sensitive data? If so, please describe that plan.

³ Joseph F. DeCarolis, "Administrator's Memo Requesting Emergency Clearance," (January 24, 2024), Letter to Dominic J. Mancini, available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202401-1905-002

⁴ 44 U.S.C. § 3507(j).

4. This is a mandatory survey and failure to comply with the requests for information could carry criminal charges. Has the OMB ever approved an emergency request for information collection in the past that carried criminal penalties for failure to respond? If so, please describe those requests. Additionally, did the OMB give any consideration to making this a voluntary request? Why or why not?
5. In order to meet requirements for emergency processing, the EIA must demonstrate that it has taken all practicable steps to consult with not only interested agencies but also members of the public. Did the EIA provide any evidence of soliciting public input prior to requesting emergency processing? If so, who and which agencies did the EIA consult?

We appreciate your prompt attention to our request and look forward to your response.

Sincerely,

A handwritten signature in blue ink that reads "Tom Emmer". The signature is written in a cursive style with a large, sweeping initial "T" and a long, horizontal flourish at the end.

Tom Emmer
Majority Whip