

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6301

(202) 225-6371

www.science.house.gov

August 16, 2023

The Honorable Shalanda Young
Director
Office of Management and Budget
725 17th Street NW
Washington D.C. 20503

Dear Director Young:

The House Science, Space, and Technology Committee (Committee) has been investigating the process of selecting an international organization, the Science Based Target Initiative (SBTi), as the sole arbitrator of emission reduction targets for federal contractors. After several letters sent by the Committee with no answers provided, we seek further explanation into the selection of SBTi by the Council on Environmental Quality (CEQ) and the Federal Regulatory Council (FAR), justification of the seemingly nefarious financial activities of SBTi, and legal analysis explaining the unconstitutional outsourcing of Congressional authority to an international non-governmental organization.

On May 20, 2021, President Biden issued Executive Order 14030 (E.O. 14030), Climate-Related Financial Risk.¹ E.O. 14030 seeks to require major federal suppliers to, “publicly disclose greenhouse gas emissions and climate-related financial risks.”² On November 14, 2022, the FAR published the proposed rule, implementing the E.O. adding the requirement that “major federal suppliers [also] set science-based reduction targets” and defined “major federal suppliers” as businesses with contracts with the federal government valued over \$50 million.³ Within the rule, FAR council outsourced the standards and validation work to SBTi, effectively making a foreign non-governmental organization the sole source provider of these services. President Biden’s E.O. 14030 does not require these standard setting and validation services, nor does it have the authority

¹ 3 Exec. Order No. 14,030, 86 Red. Reg. 27967 (May 20, 2021), <https://www.federalregister.gov/documents/2021/05/25/2021-11168/climate-related-financial-risk>.

² *Id.*

³ Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk, 87 Red. Reg. 218 (proposed on Nov. 14, 2022) (to be codified 48 C.F.R pt. 1,4,9,23,52), <https://www.federalregister.gov/documents/2022/11/14/2022-24569/federal-acquisition-regulation-disclosure-of-greenhouse-gas-emissions-and-climate-related-financial> [hereinafter *FAR: Climate-Related Financial Risk*].

to issue this requirement. Additionally, the Executive branch does not have constitutional authority to delegate administrative and legislative authority to a foreign entity, or any entity for that matter, without Congressional approval.⁴ For these reasons and more, the Committee is investigating the decision by Administration officials to propose outsourcing this primary government function and the selection of SBTi.

On March 9, 2023, the Committee sent oversight letters to CEQ and FAR.⁵ Additionally on May 5, 2023, the Committee sent a letter to the National Aeronautics and Space Administration (NASA).⁶ Each of these letters questioned the selection process conducted by the agencies.⁷ The rule would impact over 670 U.S. contractors and steer at least \$1.2 million in yearly fees to SBTi.⁸ On April 27, 2023, the Office of Management and Budget (OMB) responded on behalf of CEQ and FAR, but refused to provide any answers to the our questions or the documents we requested.⁹ Instead, OMB claimed they would include the letter as a “comment” in the official review of the proposed rule because doing otherwise would interfere with the notice and comment process.¹⁰ This is a patently false statement.¹¹ By preventing CEQ, NASA, and FAR from responding to what would otherwise be a routine Congressional oversight request, OMB is actively obstructing the Committee’s oversight functions under the guise of administrative process.

Furthermore, on June 22, 2023, the House Committee on Natural Resources held a full committee hearing with Brenda Mallory, Chair of CEQ.¹² During the hearing, Chair Mallory repeatedly refused to answer questions regarding the selection of SBTi, questions that for the most part were included in the Committee’s letters.¹³ Specifically, Chair Mallory refused to answer why

⁴ Myers, *Administratrix v. United States*, 272 U.S. 52, 129 (1926) (stating that the power to establish offices, determination of functions and jurisdiction, relevant qualifications and fixing the term falls to Congress); *see also* Henry B. Hogue, CONG. RSCH. SERV., R42852, PRESIDENTIAL REORGANIZATIONAL AUTHORITY: HISTORY, RECENT INITIATIVE, AND OPTIONS FOR CONGRESS 1-3, 33-34, 49 (2021), <https://sgp.fas.org/crs/misc/R42852.pdf> (describing how the Executive must ask for authorization from Congress to reorganize or delegate administrative or legislative without Congressional authorization).

⁵ Letter from Frank Lucas, Chairman, H. Comm. on Sci., Space, and Tech., to Mathew C. Blum, Chair, Fed. Acquisition Regul. Council (Mar. 10, 2023), <https://republicans-science.house.gov/cache/files/5/0/5010748d-ea2a-435c-b63f-2603c9d15418/AFBCC3D9063875ADC02C39DF847F1675.2023-03-10-letter-to-far-on-proposed-emissions-rule.pdf>; Letter from Frank Lucas, Chairman, H. Comm. on Sci., Space, and Tech., to Brenda Mallory, Chair, Council on Env’t Quality (Mar. 10, 2023), <https://republicans-science.house.gov/cache/files/2/b/2b20da8d-c61b-434b-8940-a75e2f3ff72f/6320CE269D227135EB2B0DBEFB53E7C9.2023-03-10-letter-to-ceq-on-far-council-proposed-emissions-rule.pdf>; Letter from Frank Lucas, Chairman, H. Comm. on Sci., Space, and Tech., to Bill Nelson, Administrator, Nat’l Aeronautics and Space Admin. (May 5, 2023), <https://republicans-science.house.gov/cache/files/8/5/857cb644-04ce-48e3-90bf-6c2246279ff4/CABB4B69C9A700A3D76A8B3A92FD436D.2023-05-05-fl-to-nasa-sbti-.pdf> [hereinafter *NASA Letter*].

⁶ *NASA Letter*, *supra* note 5.

⁷ *FAR: Climate-Related Financial Risk*, *supra* note 3.

⁸ *Id.*

⁹ Letter from Wintta M. Woldemariam, Associate Director, Off. of Legis. Aff., Off. of Mgmt. and Budget, to Jay Obernolte, Chairman, Subcomm. on Investigations and Oversight, H. Comm. on Sci., Space, and Tech. (Apr. 27, 2023) <https://republicans-science.house.gov/cache/files/7/e/7ee2d58b-94bc-41b3-a4f6-76edbb8ea1d0/6EEE19899F0E2A329D3E66D9394C1A5E.chairmanobernolteresponse-4.27.pdf>.

¹⁰ *Id.*

¹¹ 5 U.S.C. § 553 (1966); *see also* ADMIN. CONF. OF THE U. S., ADMINISTRATIVE CONFERENCE RECOMMENDATION 2020-1: RULES ON RULEMAKING, (adopted Dec. 16, 2020), <https://www.acus.gov/sites/default/files/documents/Recommendation%202020-1%2C%20Rules%20on%20Rulemakings.pdf> (stating that the purpose of the rules on rulemaking promote accountability and transparency).

¹² *Examining the Council on Environmental Quality Fiscal Year 2024 Budget Request and Related Policy Matters Before the H. Comm. on Natural Resources*, 118th Cong. (2023) [hereinafter *CEQ Budget*] (statements of Brenda Mallory, Chair, Council on Environmental Quality).

¹³ *Id.*

the Biden Administration chose an international organization for this task; refused to answer whether there was a competitive bidding process; refused to answer how the Biden Administration plans to ensure SBTi will not be influenced by foreign governments or organizations; refused to answer why the Biden Administration did not select a U.S. based organization; refused to answer concerns over the accuracy of SBTi's emissions assessments; and refused to answer whether she was aware that one of SBTi's founders accused SBTi of having conflicts of interest and putting its own interests over the interests of the public.¹⁴ Chair Mallory did admit she did not know whether other agencies or organizations were considered before awarding SBTi the role of sole arbitrator of emission reduction targets for federal contractors, which, in itself, is an issue for alarm.¹⁵

The selection of SBTi, OMB's obstruction of the Committee's constitutional oversight function, and Chair Mallory's refusal to provide answers is even more alarming, given information brought to light in a recent news article. The article highlighted that SBTi did not "officially exist" until June 26, 2023, nearly eight years after its launch and many months after the publication of the proposed rule.¹⁶ While SBTi filed its official incorporation in the United Kingdom, it appears that it is currently not registered in the United States.¹⁷ According to these incorporation documents filed in London, SBTi is funded and managed by We Mean Business, an organization closely linked to the New Venture Fund, a known Democratic "dark money" group that does not disclose its donors.¹⁸ SBTi's connection to groups that routinely fund Democratic causes and campaigns exacerbates concerns that they were arbitrarily selected to perform this task and that this Administration is potentially directing millions of dollars in business revenue to an organization that is closely tied to its donors. Congress needs to know immediately if this Administration has been attempting to improperly use the rule-making process to funnel money to anonymous partisan corporate entities.

SBTi also has come under recent scrutiny due to potential conflicts of interest and a lack of transparency.¹⁹ SBTi has been accused of manipulating their metrics to favorably portray certain companies as more successful in greenhouse gas emissions reduction than the companies actually were.²⁰ For example, the New Climate Institute recently analyzed the greenhouse gas emissions disclosures of companies that received a good approval score from SBTi.²¹ The New Climate Institute published their findings in a report, stating that "for the majority of the companies assessed... with an SBTi approved 1.5°C (or 2°C) compatible target, we would consider that rating either **contentious or inaccurate**...."²² Among the companies flagged by the New Climate

¹⁴ *CEQ Budget*, *supra* note 12.

¹⁵ *Id.*

¹⁶ Alana Goodman, *Biden Proposal Would Give Foreign Climate Group Veto Power Over U.S. Military Contracts*, THE WASHINGTON FREE BEACON (Jul. 13, 2023), <https://freebeacon.com/biden-administration/biden-proposal-would-give-foreign-climate-group-veto-power-over-u-s-military-contracts/> [hereinafter *Proposed Climate Group Gives Veto Power*].

¹⁷ *Certification of Incorporation of a Private Limited Company: Science Based Targets Initiative LTD*, COMPANIES HOUSE U.K. (Jun. 26, 2023), <https://find-and-update.company-information.service.gov.uk/company/14960097/filing-history>.

¹⁸ *Id.*; see also *Proposed Climate Group Gives Veto Power*, *supra* note 16.

¹⁹ Joe Lo, *Science Based Targets initiative accused of providing a 'platform for greenwashing'*, CLIMATE HOME NEWS (Jun. 6, 2022), <https://www.climatechangenews.com/2022/02/06/science-based-targets-initiative-accused-providing-platform-greenwashing/#:%7E:text=The%20Science%2DBased%20Targets%20initiative,or%20C%20of%20global%20warming>.

²⁰ Thomas Day, et al, *Corporate Climate Responsibility Monitor 2022*, NEW CLIMATE INSTITUTE (2022), <https://newclimate.org/sites/default/files/2022/02/CorporateClimateResponsibilityMonitor2022.pdf>.

²¹ *Id.*

²² *Id.*

Institute for receiving an erroneous rating by SBTi was IKEA, the buyer-assembled furniture store. This is notable because the IKEA Foundation, which is the sister company of IKEA, publicly stated that they donated \$18 million to SBTi.²³ IKEA's dual role as both a donor and recipient of SBTi's validation service is one example of rampant conflicts of interests. Needless to say, the Committee is deeply concerned with mandating major federal contractors to use a validation service provided by a foreign company accused of engaging in a "pay-for-play" with favored companies.

The lack of transparency within SBTi recently surfaced, again, when one of the founders of SBTi, Mr. Bill Baue, alleged that he was removed from SBTi's technology advisory committee after raising concerns regarding SBTi's scientific methodology.²⁴ Moreover, in a recent interview, Mr. Baue raised concerns that under the Administration's proposed rule, SBTi would be "operating in a quasi-regulator stance...and yet it doesn't have the kind of checks and balances or transparency for such an organization..."²⁵ This unprecedented transfer of authority creates unclear and nebulous issues including a lack of oversight and accountability mechanisms, clear national security concerns, and degradation of the government's mission readiness.

From a scientific and national security perspective, the unconstitutional outsourcing of Congressional authority to SBTi limits the federal government from actively reviewing the processes and methodologies to ensure sound scientific practices are being followed. Additionally, the federal government would be inhibited from ensuring foreign actors are not influencing the group to harm the U.S. or our allies. Indeed, there is strong evidence that foreign actors are engaging in misinformation with regard to climate change and foreign non-governmental organizations.²⁶ For example, there is evidence Russia funneled millions of dollars through non-government organizations to influence U.S. energy markets.²⁷ According to the former Secretary General of NATO, "Russia, as part of their sophisticated information and disinformation operations, engaged actively with so-called nongovernmental organizations - environmental organizations working against shale gas - to maintain dependence on imported Russian gas."²⁸ Without a clear oversight process, the United States will have no way of knowing whether or not SBTi's emissions metrics are being manipulated to disfavor American companies, making it harder for us to acquire goods and materials that are critical to our national security.²⁹

²³ Press release, Science Based Targets Initiative, SBTi Secures \$37M USD to Scale-up Exponential Growth (Nov. 3, 2021), <https://sciencebasedtargets.org/news/sbti-secures-37m-usd-to-scale-up-exponential-growth>.

²⁴ Bill Baue, *Formal Complaint: Science Based Targets Conflicts of Interest*, MEDIUM (Feb. 15, 2021), https://bbaue.medium.com/formal-complaint-science-based-targets-conflicts-of-interest-f8199407ac10#_ftnref3, see also Bill Baue, LINKEDIN (Feb. 15, 2021), https://www.linkedin.com/posts/billbaue_formal-complaint-science-based-targets-conflicts-activity-6767120667797143552-33wv?utm_source=share&utm_medium=member_desktop.

²⁵ *Proposed Climate Group Gives Veto Power*, supra note 16.

²⁶ Letter from Lamar Smith, Chairman, H. Comm. on Sci., Space, and Tech., and Randy Weber, Chairman, Subcomm. on Energy, to Steven Mnuchin, Secretary, Dep't of Treas. (Jun. 29, 2017) <https://republicans-science.house.gov/cache/files/7/a/7ab01fca-7258-4b35-9580-11500c67ec76/C13408FE3E3819EA58ABE2155B1E86D9.06-29-2017-clis-weber---mnuchin.pdf>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ See generally, Letter from Frank Lucas, Chairman, H. Comm. Sci., Space, and Tech., to Luiz Amaral, Chief Executive Officer, Sci. Based Target Initiative (Jul. 12, 2023) (on file with Committee); see also Letter from Karen Elizabeth Christian, Counsel, Akin Gump Strauss Hauer & Feld LLP, on behalf of Sci. Based Targets Initiative, to Frank Lucas, Chairman, H. Comm. Sci., Space, and Tech. (Aug. 9, 2023) (on file with Committee) (highlighting that as a UK Company, SBTi has limited legal obligations when responding to U.S. government oversight, but may cooperate on a voluntarily basis).

The Committee has a duty to investigate the processes used by CEQ, NASA, and FAR in the selection of SBTi as the sole source provider of emission targets and emission validation services. Given the myriad of issues raised in this letter—such as the seemingly nefarious financial activities, the unconstitutional outsourcing of Congressional authority, conflicts of interest, lack of transparency, and threats to national security—the Committee once again seeks answers on awarding SBTi this role. Hence, the Committee reiterates the request for OMB to provide a response to its letter, to be delivered by August 30th.

Failure to comply may result in the use of all available tools at Congress' disposal. Should you have any questions please contact Dario Camacho or Victoria Lombardo of the Committee staff at (202) 225-6371. Thank you for your time and consideration regarding this matter.

Sincerely,



Frank D. Lucas
Chairman
House Committee on Science,
Space, and Technology

cc: Zoe Lofgren, Ranking Member, Committee on Science, Space, and Technology
Brenda Mallory, Chair, Council on Environmental Quality
Mathew C. Blum, Chair, Federal Acquisition Regulatory Council
Bill Nelson, Administrator, National Aeronautics and Space Administration