

**The Children's Food & Beverage Advertising Initiative  
Council of Better Business Bureaus  
Submission on the WHO Interim Report of the  
Commission on Ending Childhood Obesity  
June 4, 2015**

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The Children's Food and Beverage Advertising Initiative (CFBAI), a children's advertising self-regulation program, administered by the Council of Better Business Bureaus (BBB) in the United States, appreciates that the World Health Organization (WHO) and the Commission on Ending Childhood Obesity (ECHO or Commission) are providing an opportunity to comment on ECHO's recently published Interim Report.<sup>1</sup> The report thoughtfully describes why it is critical that childhood obesity be addressed and the various approaches and interventions that are most likely to be effective. We write because the role of self-regulation in addressing food marketing to children in this mix needs further elucidation.

### **Introduction**

It is universally recognized that childhood obesity is a complex problem of epic proportions with its roots tied to macro-environmental as well as individual factors. We share the goal of wanting the world's children to grow up with healthy body weights, unburdened by the NCDs associated with obesity. We also share the WHO and Commission's view that stopping and reversing the tide of obesity requires a multi-factorial, multi-sectorial and multi-stakeholder approach. No one sector alone can be effective. Success depends on constructive and open engagement and cooperation among civil society and the private sector, facilitated by the WHO and the Commission.

We agree completely that a comprehensive strategy that addresses the obesogenic environment and critical elements in the life-course should be addressed. At the same time, we believe that the Interim Report (para 39), in proposing regulatory and statutory approaches for marketing, may not fully appreciate or account for the potential practical, public policy, and legal obstacles to regulatory or legislative actions to address or restrict food marketing to children in some jurisdictions. Here, regulators and others encouraged

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<sup>1</sup> CFBAI has 18 participants, some of the largest food and beverage companies in the United States and the world. They are the American Licorice Company, Burger King Corporation, Campbell Soup Company, The Coca-Cola Company, ConAgra Foods, Inc., The Dannon Company, Inc., Ferrero USA, Inc., The Hershey Company, General Mills Inc., Kellogg Company, Kraft Foods Group, Inc., Mars, Incorporated, McDonald's USA, Mondelēz Global LLC, Nestlé USA, PepsiCo, Inc., Post Foods, LLC and Unilever United States.

(and still encourage) a self-regulatory approach to address concerns about food marketing to children in light of the rise in childhood obesity. We believe that the WHO and Commission reports and deliberations also should reflect the important role of self-regulation bodies in NCD prevention.

In the United States, the 18 companies participating in CFBAI voluntarily agree to restrict significantly their food advertising directed to children under age 12 as one way to contribute to the fight against childhood obesity and NCD prevention. Our comments focus on the contribution of the self-regulatory system in improving the children's food advertising landscape in the United States and in inspiring other bodies around the world to develop or enhance responsible food marketing policies and practices.

### **About BBB**

The Council of Better Business Bureaus, a more than 100-year-old non-profit membership organization, is the umbrella organization for local Better Business Bureaus, which are grassroots organizations that foster a fair and honest marketplace and an ethical business environment. BBB also administers respected self-regulation programs such as CFBAI.

### **About CFBAI**

CFBAI's goal is to be part of a multi-faceted solution to the complex problem of childhood obesity by using advertising to help promote healthier dietary choices and lifestyles among children under age 12. Under CFBAI's [Core Principles](#),<sup>2</sup> participants commit that in advertising primarily directed to children under age 12 ("child-directed advertising") they will depict only healthier or better-for-you foods.<sup>3</sup> Since December 31, 2013, participants may advertise only foods that meet [CFBAI's category-specific uniform nutrition criteria](#) in their child-directed advertising.<sup>4</sup>

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<sup>2</sup> CFBAI's Core Principles also require other commitments, including participants agreeing to not advertise their foods, even their healthier ones, to children in elementary schools (pre-K through 6<sup>th</sup> grade). CFBAI's Core Principles are available on CFBAI's website at [www.bbb.org/kids\\_food](http://www.bbb.org/kids_food).

<sup>3</sup> CFBAI has taken a measured and responsible approach that is responsive to concerns about the impact of advertising to kids on food preferences and short term consumption patterns (See IOM Report at n. 2, above), but does not unduly affect advertising that is directed at adults and teens. Thus, CFBAI is not designed to address all ads in venues children might visit or might see in media, such as ads on prime time programs. Even when family or adult-directed programs in primetime are popular with children, they tend to be a very small portion of the audience. In primetime, ad buys are costly so advertising is targeted towards the relevant demographic groups that are a significant portion of the audience, which are not children. For example, published reports indicate that children ages 2-11 represent a very small percentage of the overall audience (~4-6%) even in family or adult-targeted shows popular with kids.

<sup>4</sup> CFBAI's uniform nutrition criteria replaced and are even stronger than previously used company-specific nutrition criteria.

The participants agree to CFBAI oversight and to be held accountable for failure to comply with their commitments. CFBAI extensively monitors covered media for compliance and requires participants to submit detailed self-assessments annually. Each year CFBAI publishes a compliance and progress report.<sup>5</sup>

CFBAI's goals and those the WHO expressed in the 2010 *WHO Set of Recommendations on the Marketing of Foods and Non-alcoholic Beverages to Children* are quite similar. The WHO document states, "The main purpose of the recommendations is to guide efforts by Member States to help reduce the impact of foods high in saturated fats, trans fatty acids, free sugars and salts." As explained below, CFBAI was created in part to respond to the Institute of Medicine's (IOM) call for companies to shift their child-directed advertising to foods that are lower in calories, fats, salt and added sugars, and that are higher in nutrient content.

Since the launch of CFBAI, the participants have made notable improvements in foods they advertise to children, particularly by reducing calories,<sup>6</sup> sugars,<sup>7</sup> and sodium.<sup>8</sup> At the same time, the nutrient density of foods CFBAI participants have advertised to children has steadily increased. Now about 80% of CFBAI participant ads (based on a review of ads in a 30-hour sample of programming that aired on a popular children's network) are for foods that contain, either as a component or an ingredient, fruits, vegetables, whole grains or low/non-fat dairy. CFBAI analyses also indicate participant advertising represents a substantial majority (~70 to 80%) of child-directed food advertising on television, which is the key medium used to reach children.

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<sup>5</sup> See, e.g., A REPORT ON COMPLIANCE AND PROGRESS DURING 2013 (Dec. 2014), available at <http://www.bbb.org/globalassets/local-bbbs/council-113/media/cfbai/cfbai-2013-progress-report-dec-2014.pdf>. We have found outstanding compliance every year. The problems that CFBAI has detected or that participants have self-reported have been quickly remedied.

<sup>6</sup> While foods advertised to children are often characterized as high in calories that is not the case with CFBAI participant food ads. Under CFBAI's criteria, all foods in an individual food category, for example, may contain no more than 210 calories. Main dishes may not exceed 350 calories, and meals may not exceed 600 calories.

<sup>7</sup> Significant sugar reductions have occurred in a variety of foods CFBAI participants advertise to children, including yogurts, meals and most notably, cereals, which are the most frequently advertised food to children. Before CFBAI started, some cereals advertised to children had 14-15 grams of sugar per serving. Now all cereals with a standard one-ounce serving size that participants advertise to children may contain no more than 10 grams per serving. Many contain less and the percentage of cereals with 9 or fewer grams per serving has been steadily growing. At the same time their whole grain content and other positive nutrients have been increasing. For example, as of May 2014, two-thirds of CFBAI participant ready-to-eat cereals that may be advertised to children list whole grains as the first ingredient.

<sup>8</sup> CFBAI participants have reduced the sodium content in many foods they advertise to children, and often have general portfolio-wide sodium reduction goals. Reductions have occurred in foods popular with children such as canned pastas, cereals, crackers, meals, and waffles.

We are proud that CFBAI was the model for the EU and Canadian Pledge responsible marketing programs and that there are now children's food advertising pledge programs around the world that are being supported by the members of the *International Food and Beverage Alliance* (of which all but one member are also CFBAI participants) and other companies.

## **THE CONSULTATION QUESTIONS AND RESPONSES**

### **1. Are there issues or strategies that have been overlooked in the Commission's interim report?**

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The Interim Report suggests that regulatory and statutory approaches are needed to ensure that all companies marketing to children and all forms of marketing to children are covered (para 39). Although we recognize that a statutory response can ensure there is a level playing field across the whole industry, such a response is not necessarily readily obtainable or as effective as self-regulation in all jurisdictions. For example, reaching agreement on a statutory approach can be a resource- and time-consuming exercise (if possible at all) as would be the task of writing implementing regulations.<sup>9</sup>

The U.S. Federal Trade Commission (FTC), the principal regulator of advertising in the United States, consistently has supported legitimate self-regulation in a variety of industries, including advertising (i.e., self-regulation that does not harm competition and consumers by reducing competitive alternatives). The FTC strongly encourages appropriate and strong self-regulation because it recognizes that industry self-regulation offers many advantages for consumers, regulators and industry.<sup>10</sup> One advantage is that self-regulation can be more flexible and responsive to a changing marketplace than laws and regulations. Another is that self-regulation can be quicker, more efficient and less costly than government legislation or regulation. And as FTC Commissioner Maureen Ohlhausen said in a speech on self-regulation last year, "Their [member firms] accumulated judgment and hands-on experience in their industries help create rules that are workable for companies.

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<sup>9</sup> For example, in the United States, First Amendment jurisprudence acts as a singular bar on restrictions on truthful, non-deceptive commercial speech. See [Food Marketing to Children and Youth: Threat or Opportunity?](#) at pp. 340-51 (2006) ("IOM Report").

<sup>10</sup> See, e.g., The Honorable Maureen K. Ohlhausen, Commissioner, FTC, "[Success in Self-Regulation: Strategies to Bring to the Mobile and Global Era – Better Business Bureau Self-Regulation Conference](#)" (June 2014).

The self-regulatory process also helps prompt compliance by allowing corporations to “buy-in” to the process.”<sup>11</sup>

CFBAI was created largely to respond to calls-to-action from the FTC, the U.S. Department of Health & Human Services (HHS)<sup>12</sup> and the IOM<sup>13</sup> for industry self-regulation and food companies to do more to address food advertising to children. CFBAI exemplifies the advantages associated with self-regulation. In less time than it generally might take the government to propose and issue a rule, CFBAI was created, implemented, enforced, and substantially enhanced several times. CFBAI has demonstrated an ongoing commitment to strengthen and adapt self-regulatory measures to changing needs. This self-regulatory approach has been welcomed by regulators, such as the FTC,<sup>14</sup> and others such as the First Lady of the United States,<sup>15</sup> as effective in helping to drive change in the marketplace and in improving the children’s food advertising landscape.

Self-regulation works because responsible companies know that childhood obesity is a complex problem that requires the efforts of many to combat. CFBAI’s participants want to be good corporate citizens and be part of the solution. At the same time, self-regulation is generally aligned with companies’ desire to meet consumer demand for healthier foods.<sup>16</sup>

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<sup>11</sup> *Id.* at p. 2.

<sup>12</sup> See [Perspectives on Marketing, Self-Regulation, & Childhood Obesity](#) (2006), a report on a joint FTC/HHS workshop.

<sup>13</sup> See IOM Report, n. 9 above at p. 11.

<sup>14</sup> In December 2012, the FTC recognized the progress that had been made toward improving the foods marketed to children. “The encouraging news is that we’re seeing promising signs that food companies are reformulating their products and marketing more nutritious foods to kids, especially among companies participating in industry self-regulatory efforts.” *FTC Releases Follow-Up Study Detailing Promotional Activities, Expenditures, and Nutritional Profiles of Food Marketed to Children and Adolescents* (press release), available at <http://www.ftc.gov/news-events/press-releases/2012/12/ftc-releases-follow-study-detailing-promotional-activities> (includes Report link). The 2012 Report also noted an improvement in the overall nutritional profile of foods advertised to children: “Calories and the food components to reduce (sodium, sugar, saturated fat, and trans fat) all decreased, while all of the nutrients to increase showed improvements (namely fiber, whole grain, calcium, vitamin D, and potassium).” FTC Report at 30.

<sup>15</sup> During the September 18, 2013 White House Convening on Food Marketing to Children, the First Lady stated, “I was so pleased that 17 major American companies came together on their own as part of the Children’s Food and Beverage Advertising Initiative to adopt new standards for marketing to kids. And I know this wasn’t easy. Forging consensus among fierce competitors is a challenge to say the least. But these new standards are beginning to have an impact, and I commend all of these companies for taking action.” Remarks of Michelle Obama, available at <https://www.whitehouse.gov/the-press-office/2013/09/18/remarks-first-lady-during-white-house-convening-food-marketing-children>.

<sup>16</sup> H. Cardello, J. Wolfson, M. Yufera-Leitch, L. Warren, and M. Spitz, “[Better-For-You Foods: An Opportunity To Improve Public Health And Increase Food Industry Profits](#),” Hudson Institute, March 2013. The Hudson Institute’s studies show that that increasing sales of lower-calorie foods and beverages can improve overall company sales performance. These reports can support companies’ efforts to grow the better-for-you foods portion of their portfolios.

Combined with consumer education and communication (such as through the Grocery Manufacturers Association and Food Marketing Institute [Facts Up Front](#) nutrition labeling program) self-regulation can help promote healthy diets and physical activity among children, a goal that is directly aligned with the Commission's goal of achieving healthier eating norms and behaviors (para 40).

For the reasons described above, self-regulation has an important place in the policy mix and further consideration should be given to the benefits of voluntary initiatives and industry-led self-regulation.<sup>17</sup>

## **2. How can your sector/entity contribute to the proposed policy options to end childhood obesity?**

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CFBAI believes it can assist responsible members of the food industry through the development and application of meaningful nutrition criteria to govern what foods may be advertised to children. CFBAI also hopes that its participants' actions, such as showing fruit, vegetables, or dairy (milk and yogurt) as individual items or components of meals in ads directed to children, will help popularize such foods with them and support the efforts of parents in promoting balanced diets. The Children's Advertising Review Unit (CARU), CFBAI's sister program, also promotes responsible food marketing to children through its guidelines on *how* food should (and should not) be advertised to children.<sup>18</sup> (CFBAI focuses primarily on *what* foods may be advertised to children.)

## **3. What are the important enablers to consider when planning the implementation of these proposed policy options?**

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In the United States there are multiple government definitions and systems as well as third-party criteria that purport to define healthy diets, healthy foods and unhealthy foods. The

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<sup>17</sup> The Hudson Institute also advises that "Public health officials and policymakers should be aware of food, beverage, and restaurant companies' core performance metrics in order to work more effectively with them to address the obesity epidemic in the future." *Id.* at p. 13.

<sup>18</sup> CARU's operational policies are set by the Advertising Self-Regulatory Council, which is a strategic alliance of the advertising industry and BBB. CARU's guidelines are available at <http://www.asrcreviews.org/wp-content/uploads/2012/04/Guidelines-FINAL-FINAL-REVISED-20142.pdf>. For example, among other things, CARU's Guidelines:

- Require that depictions of food being eaten are tied to the labeled serving size;
- Require that snack foods be clearly depicted as such and not as a substitute for meals;
- Prohibit the disparagement of healthy foods or lifestyles; and
- Require that mealtime depictions of foods be shown in the context of a nutritionally balanced meal.

approaches vary significantly, are confusing and worse yet, are sometimes inconsistent.<sup>19</sup> We know that this occurs in other places too. This scenario, however, makes it difficult for food companies that want to improve their foods and can lead to dissension and distrust among governments, public health groups, industry and consumers. Greater alignment among definitions and/or a recognition that a definition established for one purpose is not necessarily applicable to another will facilitate better relationships and results.

#### **4. What are the potential barriers to implementation to be considered for these proposed policy options?**

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It is important to recognize the technical food science challenges to reformulating foods safely and effectively because in many foods, nutrients, such as sodium and sugar, have functional, not just flavor, roles. Additionally, there are significant challenges to producing reformulated foods that consumers will accept. Food companies also know that even after investing substantial time and resources to create new healthier foods or to reduce sugar, sodium or fat in existing foods, consumers may reject them as not being sufficiently tasty. Year after year, surveys conducted by the *International Food Information Council* find that while healthfulness is important, taste is still the most important food attribute to consumers.<sup>20</sup> For these reasons, incremental changes generally work best.

#### **5. How would your sector/entity measure success in the implementation of these proposed policy options?**

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The success of self-regulation in changing the children's food advertising landscape can be assessed by looking at the difference between the foods advertised before and since self-regulation initiatives began. Because obesity is such a complex and multi-factorial problem,

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<sup>19</sup> For example, the government-issued *2010 Dietary Guidelines for Americans* indicate that consumption of 100% fruit juice should be counted towards only one of the recommended daily servings of fruit and vegetable (i.e., the other servings should be whole fruit or vegetable), yet another government-published system says consume fruit juice infrequently. At the same time the government's fairly recent and highly regarded standards for foods served to children at school allow up to 8 ounces of fruit juice daily in elementary schools. Similarly, the government has several definitions of "whole grain rich." There are many other examples available.

<sup>20</sup> The *2015 Food & Health Survey: Consumer Attitudes toward Food Safety, Nutrition & Health* found taste and price are the top factors in consumers' food purchasing decisions, with 83% and 68% respectively rating these factors as having "great impact." Sixty percent rated healthfulness as having a "great impact." IFIC noted, "... Americans are feeling less strongly about each of these factors in comparison to 2014. Healthfulness in particular is less impactful after its noteworthy peak last year: in 2014, seven out of ten (71%) rated healthfulness a major impact (4 or 5 on a scale of 1 to 5), but only six in ten say the same this year." Survey results available at: <http://www.foodinsight.org/2015-food-health-survey-consumer-research#sthash.S1ixjnvk.dpuf><http://www.foodinsight.org/2015-food-health-survey-consumer-research>.

the effect of self-regulation cannot be measured by simply looking at whether the prevalence or rate of childhood obesity has declined. Although we hope that children and parents will consume healthy foods and that the advertising of healthier foods will promote demand for them, consumers will decide what they purchase and eat and in what quantities.

Our success should be measured by how the children's food advertising landscape has changed; the nutritional composition of the foods self-regulation participants advertise to children; and the nutrition improvements of those foods over time.

#### **6. How would your sector/entity contribute to a monitoring and accountability framework for these proposed policy options?**

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CFBAI extensively monitors independently its participants' compliance with their commitments. We also require participants to submit detailed self-assessments on their compliance, which provides an opportunity for companies to detect and repair problems, such as by adopting enhanced internal policies or conducting retraining. CFBAI publishes an annual report on compliance and the progress that is being made in improving foods advertised to children. All other entities that have assessed our participants' compliance have found, as we have, that compliance is outstanding. CFBAI and its participants strongly believe that oversight and accountability are critical.

#### **Conclusion and Contact Information.**

CFBAI is grateful for the opportunity that the WHO and ECHO have provided to interested parties to submit comments on the Interim Report. We hope that our comments will be of assistance as you conduct your deliberations.

For further information, please contact Elaine D. Kolish, Director and Vice President, CFBAI, Council of Better Business Bureaus, at [ekolish@council.bbb.org](mailto:ekolish@council.bbb.org).