

**Summary of Prepared Statement of Elaine D. Kolish, Vice President and Director
Children's Food and Beverage Advertising Initiative, BBB
Before the Subcommittee on Commerce, Manufacturing, and Trade, and the
Subcommittee on Health of the House Energy and Commerce Committee**
"Food Marketing: Can 'Voluntary' Government Restrictions Improve Children's Health?"
October 12, 2011

Self regulation, through the Children's Food and Beverage Advertising Initiative (CFBAI), is steadily improving the foods in child-directed advertising. While the answer to the Committee's question about "voluntary government restrictions" is uncertain, it is clear that self regulation – the CFBAI – is changing the landscape of child-directed food advertising in observable and meaningful ways. CFBAI's participants are committed to addressing the concerns that have been raised about children's food and beverage advertising by advertising healthier foods (or not engaging in such advertising). Using meaningful nutrition criteria, they have shifted the emphasis of their advertising to children to foods "that are substantially lower in total calories, lower in fats, salt, and added sugars, and higher in nutrient content," just as the Institute of Medicine (IOM) recommended in 2006.

The CFBAI's new groundbreaking category-specific uniform nutrition criteria will further improve the foods in child-directed advertising and make self regulation work even better. The new criteria build on the successes from the use of company-specific criteria yet have a number of advantages over those criteria. The new criteria will require the participants to change almost one-third of the products they currently advertise to children – products that already meet meaningful nutrition standards – if they wish to continue advertising them after these criteria go into effect on December 31, 2013.

The Interagency Working Group's (IWG) Proposal was not realistic or workable. The IWG's advertising scope inappropriately would have swept in advertising to moms and families, and its proposed nutritional criteria greatly underestimated technological and consumer acceptance barriers to reformulating well-liked products. The CFBAI's new criteria, in contrast, provide a rigorous, yet realistic, roadmap for future improvements. They also are well within the scope of what the IWG was seeking as an alternative. The CFBAI's new criteria are based on, or closely aligned with, regulations defining "healthy" products and "disclosure" levels, as the IWG suggested. They also are informed by IOM's recommendations for school meals and foods sold in schools. We're delighted that the IWG intends to take CFBAI's new criteria into account in its report to Congress, because the criteria continue responsible companies' positive work in the fight against childhood obesity.

**Prepared Statement of Elaine D. Kolish, Vice President and Director
Children's Food and Beverage Advertising Initiative
Council of Better Business Bureaus**

Before the

**House Energy Commerce Committee
Subcommittee on Commerce, Manufacturing, and Trade
and the
Subcommittee on Health**

United States House of Representatives

"Food Marketing: Can 'Voluntary' Government Restrictions Improve Children's Health?"

October 12, 2011

Washington, DC

Introduction

Chairmen, Ranking Members and Members of the Committee and Subcommittees, I am Elaine Kolish, Vice President and Director of the Children's Food and Beverage Advertising Initiative (CFBAI) of the Council of Better Business Bureaus (BBB).¹ The CFBAI appreciates the opportunity to testify at your hearing on *"Food Marketing: Can 'Voluntary' Government Restrictions Improve Children's Health?"*

The answer to that question is uncertain. But it is clear that self regulation – the CFBAI – is meaningfully changing the landscape of child-directed food advertising for the better.

This statement provides an overview of the CFBAI's program and our changes over the last several years that make an already robust program even stronger. It also describes the recent ground-breaking agreement with our participants to use new CFBAI category-specific uniform criteria, in place of company-specific criteria, as of December 31, 2013. This agreement, by the nation's leading food and beverage companies, will further improve the children's food advertising landscape. Finally, it summarizes the CFBAI's views on the Interagency Working Group's (IWG) Preliminary Proposed Nutrition Principles to Guide Self-Regulatory Efforts.

The 17 leading food and beverage companies comprising the CFBAI share the goal of combating childhood obesity. They are committed to being a part of the solution to this grave problem by voluntarily agreeing to restrict their child-directed advertising to healthier foods or to not engage in such advertising. The CFBAI participants support parents' efforts to guide their children to healthier choices by developing and advertising wholesome and nutritious products to children, by providing information about healthy eating and lifestyles, and by supporting or sponsoring events and organizations that promote healthy eating, physical activity and sports.

Advertisers' self regulation efforts, while very important, can play only a small part in addressing the complex problem of childhood obesity when important building blocks for establishing healthy eating patterns are missing. Survey data consistently show, for example, that most consumers do not understand calories,² and that many overweight moms underestimate their own weight and that of their children.³ Unless and until we work together to address these key information deficiencies and promote healthy lifestyles that include physical activity, it will not be possible to stem the tide of childhood obesity.

About the Council of Better Business Bureaus (CBBB)

As the leader in advancing marketplace trust, BBB is an unbiased non-profit organization that sets and upholds high standards for fair and honest business behavior. Every year, more than 87 million consumers rely on BBB Business Reviews® and BBB Wise Giving Reports® to help them find trustworthy businesses and charities across North America. The CBBB is the network hub for 116 BBBs in the United States and Canada. CBBB also is one of the nation's recognized leaders in developing and administering self-regulation programs for the business community.

About the CFBAI

In November 2006, BBB and 10 (now 17) leading food companies joined forces to create the CFBAI to respond to the FTC's 2006 call for additional self regulation addressing advertising directed to children, because of childhood obesity,⁴ and to the Institute of Medicine's (IOM) recommendations in its 2006 report, "Food Marketing to Children and Youth: Threat or Opportunity" (IOM Report). While no casual link had been established — or has yet been established — between advertising and obesity, these founding companies were not interested in debating causality. Instead, they wanted to be a part of the solution, by using nutrition standards to govern what products they would advertise to children.

Our focus is on advertising primarily directed to the under 12 age group. Our focus on advertising that is *primarily directed at children under 12* strikes the right balance and thus minimizes the impact on advertising primarily directed to others. This reflects a thoughtful and proportionate response by responsible food marketers who participate in self regulation.

It seems easy now – almost five years later – to take for granted that food companies will limit what they advertise to children to products that meet meaningful nutrition criteria. But, in 2006 that was an innovative idea. After all, we’re talking about advertising to children for products that are legal to sell and products that parents, not children, actually purchase.

As IOM specifically recommended, the CFBAI participants have shifted the emphasis of their advertising to children to foods “that are substantially lower in total calories, lower in fats, salt, and added sugars, and higher in nutrient content.” (IOM Report at p. 11). During the last several years, as their commitments became operational, the participants reformulated or newly created more than 100 products that are advertised to children, to meet nutrition standards. In addition, the participants stopped advertising other products, or discontinued selling products that did not meet their nutritional commitments. Some participants also reformulated additional products prior to joining the CFBAI.

At the same time, the CFBAI program itself has evolved since its inception. In July we announced that the participants have agreed to replace current company-specific nutrition criteria with newly developed CFBAI category-specific uniform nutrition criteria as of December 31, 2013. (Attached as Appendix B.) As described in more detail below, this announcement was the latest in a series of significant program developments. Other changes include a substantial expansion of the CFBAI’s already rigorous and far-reaching requirements, harmonization of the definition of “child-directed” advertising, and an increase from 10 to 17 participants.

Since the outset, our participants have represented a substantial share of all the food advertising to kids and that continues to be the case. (Some participants have stopped child-directed advertising and the ad expenditures of others change from year to year.) In an informal, in-house study of ads appearing during kids' programming that CFBAI conducted in spring 2010, we found our participants' ads were 79% of the total food ads. We also observed, however, that food ads accounted for only 24% of the total number of ads. Interestingly, the largest percentage of ads was for sedentary entertainment – almost twice as many. This is consistent with the findings of the 2007 FTC Bureau of Economics Staff report.⁵ In that report, the FTC also found that food advertising to kids had declined between 1977 and 2004, and subsequent studies by other researchers have reported a *further* decline in TV food ads directed to kids.⁶ The CFBAI's goal is to increase the proportion of ads for healthier products, not to reduce food ads to kids. But, policy makers should be aware of the overall decline in food advertising to kids and the modest portion of food advertising within the total amount of advertising to kids.

CFBAI Program Overview

Our intent in creating the program was for it to be rigorous and dynamic, and to evolve over time, as it has.

First, we increased our core requirement to a 100% commitment. The CFBAI's original Core Principles required that participants commit to advertising healthier products at least half the time. All the participants, however, committed that 100% of their advertising primarily directed to children under 12 (child-directed advertising)⁷ would be for healthier products. Consequently, in December 2009 the CFBAI announced Enhanced Core Principles that incorporated the 100% commitment in the Principles, effective January 1, 2010.⁸

Second, we eliminated healthy lifestyle messaging as a compliance option. Originally, the participants could satisfy the Initiative's advertising commitment through ads for healthier products, healthy lifestyle messaging or some combination of the two. Now all advertising commitments must be met through healthier products (or by not advertising). (Nonetheless, the participants continue to support and promote healthy lifestyles.) Consequently, under the revised CFBAI Core Principles the participants commit either that they will not engage in child-directed advertising, or that 100% of their child-directed advertising will be for healthier products.

Third, we expanded our program requirements significantly. To complement our coverage of traditional media, TV, print, radio and websites, we added new and emerging social and digital media, such as child-directed ads on apps on Ipads or Iphones and ads in video games, when they are child-directed. Word-of-mouth advertising that is primarily directed to children under 12 is also covered. Although we expect television to continue to be the main venue for advertising to children, the Core Principles now include newer and still-emerging platforms.

Fourth, we strengthened our program by substantially harmonizing the definition of "child-directed" advertising. Initially we permitted participants to use existing, reasonable definitions that most already had in place. Although in practice their definitions were very comparable, facially they appeared to differ. So we asked our participants to use a threshold of no higher than 35% children under 12 in the audience to define child-directed advertising and they agreed. Now the participants are substantially harmonized, with no one using a standard higher than 35% children age 2-11 in the audience as their baseline for determining what is child-directed advertising.

Fifth, we've added to the program compliance monitoring of participant policies not to engage in advertising that is primarily directed to children under age six. This came about because we had asked our participants to consider adopting policies not to engage in advertising of *even their healthier foods* that is primarily directed to children under age six, as this is the age group that is the least sophisticated. Five participants adopted CFBAI's suggestion and joined the six that already had such a policy in their CFBAI pledge. Because these policies are now prevalent, CFBAI will monitor and report on compliance with them.

Participants' Current Nutritional Commitments

Three candy companies no longer engage in child-directed advertising, and another participant is continuing its longstanding commitment to not direct any advertising to children under 12.⁹ Thirteen participants have pledged to advertise to children under 12 only foods that meet science-based nutritional standards that BBB has reviewed and approved.¹⁰ The standards the companies use today are recognizable ones familiar to nutrition professionals. They are generally based on the Dietary Guidelines for Americans (2005) and FDA standards, such as FDA's definition of "healthy."

The Initiative's current approach of balancing flexibility (company-proposed nutrition standards) with rigor (standards must be science-based and approved by BBB) and transparency (standards and commitments are publicly available on BBB's website at <http://www.bbb.org/us/children-food-beverage-advertising-initiative/2010-pledges/>) has encouraged participation and competition among the participants, resulting in significant improvements in products advertised to children. The CFBAI publishes annual reports on compliance and progress and each year has found that compliance is excellent and that the foods being advertised to children are getting even better.¹¹

The foods that CFBAI's participants advertise today include items such as cereals, crackers, soups, canned pastas and meals with fruit and low-fat dairy — products that meet meaningful nutrition standards familiar to nutrition professionals. The advertising also includes many foods that meet FDA's definition of "healthy" foods. These foods are neither high in calories nor products that represent the top sources of calories in children's diets.¹² In the individual food category, all foods currently advertised contain no more than 200 calories (except two peanut butters with 210 calories). Main dishes do not exceed 350 calories and meals do not exceed 600 calories. In addition, the participants have reduced the sugar content of products, in particular in ready-to-eat cereals, the sodium content of products such as soups, pastas and other meal items, and the fat content of many products. At the same time the nutritional richness of products has increased, with more products than ever containing, for example, whole grains or a larger amount of whole grains.

The CFBAI's informal study of advertising during a sample of children's television programming in 2010 showed that the CFBAI participants' child-directed ads usually are for, or include, nutrient dense foods that also meet reasonable limits on calories, fats, sugars and sodium. More than three-quarters of participant child-directed food advertising was for products providing at least 10% of the Daily Value (DV) of a nutrient that is a shortfall in children's diets (potassium, fiber, calcium, magnesium and Vitamin E) or a half-serving of a "food group to encourage" (fruit, vegetable, low-fat dairy and whole grains). Our analysis also showed that participant ads included the following:

- *Apples*. 24% included apples or applesauce.
- *Milk*. 21% included milk.
- *Vegetables*. 8% were for products that included at least a half-serving of vegetables.
- *Whole Grains*. 27% were for products or meals that included at least 8 grams of whole grains/50% whole grains.
- *Yogurt Products*. 12% featured low-fat yogurt products.

Since 2010, there have been more improvements in the composition of foods participants advertise to children. Appendix C summarizes and illustrates key changes.

New CFBAI Category-Specific Uniform Nutrition Criteria

Although company-specific criteria have been working well to drive positive changes in foods advertised to children, the CFBAI has taken a bold new step and adopted category-specific, uniform nutrition criteria. The new criteria build on what CFBAI's participants have already accomplished and will continue and advance the development of products that are aligned with the Dietary Guidelines for Americans. These new uniform nutrition criteria will pose significant challenges for the participants. They will require the participants to change many products they currently advertise to children – products that already meet meaningful nutrition standards – if they wish to continue advertising them after these criteria go into effect. The participants also have agreed to a challenging implementation date of December 31, 2013.

The CFBAI's process for developing the criteria was informed by the insightful experience of high-level in-house nutrition professionals who, on a daily basis, work on the development of new products and recipe changes. As a result, we had the benefit of their food technology and food science expertise, as well as their understanding of the barriers to consumer acceptance of changes to popular products and newly developed products. In developing the criteria, the CFBAI also was sensitive to competitive issues and the criteria are purposefully flexible to encourage even greater participation in self regulation, and competition.¹³

For more than a year the CFBAI and company scientists and nutrition professionals (Nutrition Science Review committee) worked to review nutrition policy developments to identify potential improvements in company-specific nutrition standards or uniform CFBAI criteria. The then-planned issuance of the Dietary Guidelines for Americans 2010 was a key

impetus for the review, as the CFBAI requires that company nutrition standards be consistent with established scientific and/or government standards. The “White Paper on CFBAI’s Uniform Nutrition Criteria” describes in detail the CFBAI’s nutrition science review and the basis for the new category-specific nutrition criteria.¹⁴

The new uniform nutrition criteria set limits on calories, saturated fat, *trans* fat, sodium and sugars (Nutrients to Limit or NTL) and include requirements for nutrition components to encourage (NCTE) for 10 product categories. While building on the successes from the use of company-specific criteria, they have a number of advantages over those criteria.

First, they are uniform. Now products across companies will meet the same criteria for a product category. The CFBAI’s product-category approach allows criteria to be tailored appropriately to reflect the inherent difference in food product categories. A one-size-fits-all approach does not work. For example, regular peanut butter, a healthy food in common parlance, is not a “low” saturated fat food. A saturated fat limit that was appropriate for the general category of individual foods including peanut butters would be higher than the limit that would be appropriate for other individual foods such as cereals, or would require creating an exemption for peanut butters. In contrast, the CFBAI’s product category approach allows limits to be set that reflect meaningful, but realistic, goals for different food categories. Product-category specific criteria can take into account food science/technology challenges specific to different categories as well as the need for incremental reductions of fat, sugars and sodium to build consumer acceptance of foods that have lower amounts of these nutrients.

Second, the new criteria are an improvement over the current criteria because they fill gaps that currently exist in the participants’ individual standards. Further, overall the limits for nutrients are more stringent. Additionally, to be consistent with and to promote the 2010

Dietary Guidelines for Americans, the CFBAI has incorporated requirements for “nutrition components to encourage” for all product categories. These requirements include (i) a minimum amount of at least a ½ serving of fruit, vegetable, whole grains or low-fat dairy (“food groups to encourage”), (ii) at least one essential nutrient at the 10% DV level,¹⁵ or (iii) a combination of both. These requirements increase as calories increase and as the role of the food in the overall diet takes on greater importance (e.g., entrees). In lower-calorie foods, it may not always be feasible to include a meaningful amount of a food group to encourage. Yet lower-calorie foods, through their essential nutrient content, may contribute meaningfully to a healthy diet. Products that are a larger contributor to caloric intake, however, must meet minimum food groups to encourage requirements.

Third, they are even more transparent and easier to understand and apply than the current standards. Thus, they can more easily serve as a roadmap for child-directed advertising practices for other U.S. food (or media) companies, and simplify compliance monitoring for the CFBAI and others. For example, they are based on the labeled serving size, which appears on the required Nutrition Facts Panel (NFP) on products, and the NFP can serve as a reference, for virtually all products, on whether key criteria have been met.

The new criteria also will eliminate some of the ways products may qualify as products participants may advertise to children. Specifically, in the future a product may not qualify based solely on a “reduced” claim (e.g., $\geq 25\%$ less sodium) or only because it is in a portion controlled, 100-calorie pack.

Overall these new uniform nutrition criteria will pose significant challenges for the participants. They will require reformulation of many products, about one-third of the products participants currently advertise – ones that already meet meaningful nutrition standards – if they wish to continue advertising them after these criteria go into effect on December 31, 2013.

Dr. Eric Decker, Chair of the Department of Food Science, at the University of Massachusetts-Amherst, and a member of the Institute of Medicine's Committee on School Foods, commented favorably on CFBAI's thoughtful approach and the benefits of the CFBAI criteria when they were issued. He said, "These criteria are meaningful, but practical, science-based standards that will further encourage healthier foods to be developed and advertised to children. Having criteria that are balanced for both nutritional significance and yet allows inclusion of foods that taste good and are affordable is critical because no matter how healthy a food is, if it's not consumed it will not improve health and wellness."

In keeping with our core requirement that nutrition standards be consistent with established scientific and/or government standards, the CFBAI intends to review the nutrition criteria periodically to determine whether new or different categories or subcategories are necessary to reflect innovation and new products in the marketplace. For example, the criteria will be reviewed after the issuance of the Dietary Guidelines for Americans 2015. At that point the participants will have had more than two years worth of experience with the new criteria. If necessary, they will be aligned with any new dietary guidance and, if appropriate and feasible, will be strengthened even further.

CFBAI Comments on the IWG Proposal

As explained in CFBAI's comment on the IWG proposal we believed that the IWG's proposed nutrition principles were not realistic and greatly underestimated technological and consumer acceptance issues (available at <http://www.bbb.org/us/children-food-beverage-advertising-initiative/info/comments/>). The CFBAI also expressed concern over the scope of the IWG's proposal, which would have swept in advertising to moms and families.

The CFBAI conducted an analysis of the products currently on the CFBAI list of participant products that meet company-specific nutrition standards to determine whether they meet the IWG's proposed nutrition principles. We found that only 14% of participants' CFBAI-listed products meet all the principles, using its *interim* sodium standard and only 7% meet all the principles using its *final* sodium standard. The products that do meet the IWG's proposed principles are primarily 100% fruit juices, low-fat milk products and granola bars.

We also analyzed the participants' "savory" and "sweet" products separately and found, as shown below, that the impact was even greater than appeared when all products are analyzed together.

- **"Savory" Product Category.** A mere 1% of "savory" foods – soups, savory crackers, mixed dishes (e.g., macaroni and cheese products), main dishes (e.g., canned pasta), and meals – meet the IWG's final sodium criterion (12% meet the interim sodium criterion) and *none* meet the IWG's criteria *overall* (interim or final).
- **"Sweet"-tasting Product Category.** Focusing on "sweet" foods and beverages – fruit snacks, cereals, sweet crackers, juices, fruit drinks and other beverages – we found that 46% meet the IWG's sugars criterion. But, only 8% meet the IWG's overall criteria (interim and final).

We also analyzed products by type and found that virtually none of the yogurts (and none of the kids-specific yogurts) and none of the soups, breakfast cereals, mixed dishes, main dishes, meals, or crackers (both sweet and savory) that CFBAI participants currently advertise to children under 12 — foods that already meet meaningful nutrition standards — would meet the IWG's proposed principles.

Our focus in commenting on the IWG's proposal, however, was on whether the proposed principles would provide a realistic roadmap for future product changes. Based on our experience working with our participants, we advised the IWG that they did not. Specifically,

the IWG's goals for nutrients, such as sugar and sodium, and for food groups, such as fruit and whole grains, exceed what reasonably could be accomplished within its proposed five year timeline, and its longer term goals presented even greater problems.

As we explained in our comment, reformulating familiar and well-liked products can be enormously difficult when a food producer is trying to increase, for example, a product's whole grain or vegetable content, *or* decrease nutrients such as sodium and sugars. When *dramatic* changes are necessary, as the IWG proposal would require for many products, the problems are greatly compounded. For example, under the IWG's proposed principles, even for products that have achieved FDA's "healthy" level for sodium (480 mg for individual foods), producers would need to decrease the sodium level by more than 50% to 210 mg in five years. To significantly decrease certain nutrients while simultaneously increasing others, as might be necessary under the IWG proposal, would be even more challenging, from both a taste standpoint and a functional and product performance standpoint. Because of these serious issues, we feared the IWG's principles would discourage, rather than encourage innovation.

The CFBAI accordingly accelerated its work on its new criteria so that we could submit them as part of our comment, and they are well within the scope of what the IWG was seeking as an alternative to its own proposed nutrition principles. The IWG expressly invited the submission of alternatives based on "federal food labeling regulations defining the nutrient content claim 'healthy,' federal regulations establishing disclosure levels for certain nutrients in connection with other nutrient content claims, or the disqualifying nutrient levels used for health claims" (IWG Request for Comments at p. 6).¹⁶ CFBAI's new criteria are based on or closely aligned with regulations defining "healthy" products, "disclosure" levels and Institute of Medicine report recommendations for school meals and foods sold in schools. They provide a rigorous but realistic roadmap for future product changes.

Conclusion

We're delighted that the IWG views CFBAI's new criteria "as a significant development" and that it intends to take them into account in preparing its report to Congress. Self regulation has accomplished a significant amount in just a few short years – it's changed not only what products are advertised to kids, but the expectations about what should or should not be advertised to kids. Our new uniform nutrition criteria will encourage further improvement in the nutritional content of foods advertised to children. Yet advertising self regulation alone will not work. Unless and until we work together to address key information deficiencies about nutrition and healthy body weights and promote healthy lifestyles that include physical activity, it will not be possible to stem the tide of childhood obesity. Thank you.

¹The bio of Elaine Kolish is attached as Appendix A.

² International Food Information Council Foundation, *2011 Food & Health Survey: Consumer Attitudes Toward Food Safety, Nutrition & Health* (2011), available at http://www.foodinsight.org/Content/3840/2011_IFIC_FDTN_Food_and_Health_Survey.pdf. See also 2010 Dietary Guidelines Alliance, *Consumer Research Report: Motivating Families to Lead a Healthier Lifestyle in 2011 and Beyond* (2010), available at <http://www.foodinsight.org/Content/3651/FINAL2010DGACConsumerResearchReport.pdf>.

³ Nicole E. Dumas *et al.*, *Obesity and Intergenerational Misperception of Body Size Prevalent among Urban Women and Their Children*, presentation at the AHA 2011 Conference, "Nutrition, Physical Activity and Metabolism/Cardiovascular Disease Epidemiology and Prevention 2011 Scientific Sessions," on March 23, 2011, available at <http://www.newsroom.heart.org/index.php?s=98&cat=217&mode=gallery>.

⁴ The recommendation emerged from a joint FTC/HHS workshop conducted in July 2005 on "Perspectives on Marketing, Self-Regulation and Childhood Obesity," and a follow up report on the workshop that FTC/HHS jointly issued in April 2006. See <http://ftc.gov/os/2006/05/PerspectivesOnMarketingSelf-Regulation&ChildhoodObesityFTCandHHSReportonJointWorkshop.pdf> at 50-51.

⁵ *Children's Exposure to Television Advertising in 1977 and 2004: Information for the Obesity Debate: A Bureau of Economics Staff Report* (available at <http://www.ftc.gov/opa/2007/06/childrenadsstudy.shtml>).

⁶ For example, a recent study found that the average number of food and beverage advertisements that children ages 2 to 11 viewed on children's programming fell by 50% between 2004 and 2010. Georgetown Economic Services (GES), *Food and Beverage Advertising 2004 and 2010: Children's Impressions and Expenditures on Children's Programs* (2011), available at http://www.gmaonline.org/file-manager/Health_Nutrition/ges_report_on_childrens_tv_advertising.pdf.

⁷ Historically, self regulation has focused on children under 12, and thus the CFBAI's efforts also focus on this age group. Although studies suggest various ages at which children begin to understand the persuasive intent of advertising, it is generally agreed that by age 12 children do have that ability. Because special protections are important for children under 12, the advertising industry always has had a set of stringent rules for advertising primarily directed to children under 12. The Children's Advertising Review Unit or CARU, which is a BBB-administered program, has promoted high standards of responsible advertising to children under 12 since 1974. (CARU's operational policies are set by the National Advertising Review Council, which is a strategic alliance of the advertising industry and the BBB.) CARU has Guidelines for children's advertisers to ensure that children's advertising is not deceptive, unfair or inappropriate for its intended audience. CARU and CFBAI are complementary

programs, with CFBAI focusing on *what* foods are advertised to children, and CARU focusing on *how* products, including foods, are advertised to children.

⁸ This document is available at <http://www.bbb.org/us/enhanced-core-principles/>.

⁹ The participants that do not engage in child-directed advertising are Cadbury Adams, The Coca-Cola Co., The Hershey Co., and Mars, Inc. (Kraft Foods has purchased Cadbury Adams and its activities will soon be entirely subsumed into the Kraft Foods pledge). In addition, Nestlé USA no longer advertises its Wonka brand (or other confections) to children. It does advertise other products such as 100% fruit juice.

¹⁰ These are Burger King Corporation; Campbell Soup Company; ConAgra Foods, Inc.; The Dannon Company; General Mills, Inc.; Kellogg Company; Kraft Foods Global, Inc.; McDonald's USA, LLC; Nestlé USA; PepsiCo, Inc.; Post Foods, LLC; Sara Lee Corp., and Unilever United States.

¹¹ The most recent report, on the year 2009, is available at <http://www.bbb.org/us/storage/0/Shared%20Documents/BBBwithlinks.pdf>. The CFBAI's comment to the IWG also contains a detailed analysis of the changes that have occurred since the 2006 period analyzed in the FTC's 2008 Report, *Marketing Food To Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation: A Federal Trade Commission Report To Congress*, which is referenced in the IWG's proposal (available at <http://www.ftc.gov/opa/2008/07/foodmktng.shtm>). As noted, there have decreases in the amount of food advertising to children (see note 6 above) and many improvements in the nutrition composition of the products CFBAI participants advertise to children.

¹² The participants' ads certainly are *not* focused on "cookies, cakes, pizza, soda or energy or sports drinks" that are the top sources of calories in the diets of children 2-18, according to the FTC. See IWG's "Food for Thought."

¹³ In crafting the criteria, we also were mindful of competition issues. Although the criteria will encourage all participants to promote healthier foods to kids, they provide flexibility on how products may meet the requirements and thus do not unfairly favor one participant over another. Promoting, rather than stifling, competition among participants encourages the broadest array of healthy and quality product choices at the lowest cost.

¹⁴ As detailed in the White Paper, the Nutrition Science Review committee reviewed new dietary recommendations; regulations for nutrition labeling and nutrient content claims for foods and beverages; and recommendations for nutritional criteria for foods marketed directly to children, foods sold in competition with school meals, and school breakfast and school lunch programs; and standards of identity for foods. The Nutrition Science Review committee also was mindful of the IWG's December 2009 proposed tentative nutrition standards for marketing to children, and the subsequent April 2011 proposed nutrition principles. The White paper is available at <http://www.bbb.org/us/storage/0/Shared Documents/CFBAI White Paper on Uniform Nutrition Criteria.pdf>.

¹⁵ Essential nutrients include protein, fiber, and vitamins and minerals for which a DV has been established, including those added to meet standards of identity that have an enrichment requirement or to restore naturally occurring nutrients that are lost in processing. If the essential nutrient requirement is met through fortification, it must be a nutrient of public health concern as specified in the DGA 2010 (i.e., dietary fiber, potassium, calcium, and vitamin D) or a nutrient required to be listed on the NFP (i.e., iron, vitamin A, and vitamin C in addition to dietary fiber and calcium). In 1993, in final regulations implementing the Nutrition Labeling and Education Act, the FDA identified calcium, iron, vitamin C, and vitamin A as nutrients of public health concern and required the amount of these nutrients to be declared in the NFP. These same nutrients also are included in FDA's definition of "healthy."

¹⁶ We note that the IWG asked whether its principles should include these same nutrients (ones that are of public health concern and those listed on the NFP: IWG Request for Comments at p. 20, question 3) as a way for a product to make a meaningful contribution to the diet. We agree they should. We do not, however, agree that the list should be limited to those nutrients. The presence of any "essential" nutrient at the good source (10% DV) level should suffice. Such nutrients are called *essential* for good reason, and when meeting FDA's definition of a good source they should be recognized as making a meaningful contribution to the diet.

Appendix A. Biography of Elaine D. Kolish

Ms. Kolish, Vice President & Director, Children's Food and Beverage Advertising Initiative, Council of Better Business Bureaus (BBB) is a nationally recognized expert on advertising and consumer-protection issues.

Prior to joining BBB in 2006, Ms. Kolish was a partner at the national law firm Sonnenschein Nath and Rosenthal LLP (now SNR Denton), where she specialized in counseling national advertisers on advertising and marketing compliance. From 1980 until 2005, Ms. Kolish was an attorney at the Federal Trade Commission. There she was a member of the Senior Executive Service and was the head of the Division of Enforcement in the Bureau of Consumer Protection. She has worked extensively on national advertising matters and led the Bureau's regulatory review efforts, as well as a number of other key policy initiatives including the Class Action Fairness Monitoring Project and the Hispanic consumer-protection program.

Ms. Kolish has served as vice chair of the American Bar Association Antitrust Section's Privacy and Information Security Committee, and was an editor of the ABA's Antitrust Section treatise on consumer protection law.

She is a 1976 graduate of the University of Massachusetts, Amherst, and graduated magna cum laude from Western New England College School of Law in 1980.

Appendix B. CFBAI Category-Specific Uniform Nutrition Criteria



Children's Food and Beverage Advertising Initiative
 Council of Better Business Bureaus, Inc.
Category-Specific Uniform Nutrition Criteria

Product Category	Unit	Nutrients to Limit (NTL)				Nutrition Components to Encourage (NCTE)	Notes
		Calories	Sat Fat	Sodium	Total Sugars		
1. Juices	LSS	≤ 160	0 g	≤ 140 mg	No added sugars	≥ ½ c F/V juices	<ul style="list-style-type: none"> – A serving must contain ≥ 4 fl oz of 100% F/V juice – Sugars limited to those naturally occurring in F/V
2. Dairy products							
– Milks and milk substitutes	8 fl oz	≤ 150	≤ 2 g	≤ 200 mg	≤ 24 g	1 c dairy	<ul style="list-style-type: none"> – For LSS < 8 fl oz, NTL & NCTE to be scaled proportionately – Powder/syrup flavorings mixed with 8 fl oz non-fat milk are allowed ≤ 25 g total sugars as prepared
– Yogurts and yogurt-type products	6 oz	≤ 170	≤ 2 g	≤ 140 mg	≤ 23 g	≥ ½ c dairy <u>and</u> ≥ 10% DV calcium	<ul style="list-style-type: none"> – 6 oz (170 g) is most common single serving size – For LSS < 6 oz, NTL & NCTE to be proportionately lower
– Dairy-based desserts	½ c	≤ 120	≤ 2 g	≤ 110 mg	≤ 20 g	≥ ¼ c dairy <u>and</u> ≥ 10% DV calcium	<ul style="list-style-type: none"> – Serving sizes limited to ½ c – For LSS < ½ c, NTL & NCTE to be scaled proportionately
– Cheese and cheese products	LSS	≤ 80	≤ 3 g	≤ 290 mg	≤ 2 g	≥ ½ c dairy equivalent (provides ≥ 10% DV calcium)	<ul style="list-style-type: none"> – For LSS < 1 oz, NCTE to be scaled to ≥ ½ c dairy equivalent and ≥ 10% DV calcium
3. Grain, fruit and vegetable products, and items not in other categories	LSS	≤ 150	≤ 1.5 g	≤ 290 mg	≤ 10 g	≥ ½ serving of F/V/D/WG or ≥ 10% DV of any essential nutrient	<ul style="list-style-type: none"> – Subcategories differentiate, on a calorie basis, among products that have a small RACC (i.e., ≤ 30 g or ≤ 2 tbsp) and/or are lighter in density (e.g., g/cup) from those with a larger RACC and/or higher density – Examples of ≤ 150 calorie products: most children's breakfast cereals, crackers, & pretzels – Examples of > 150-200 calorie products: denser breakfast cereals (e.g., shredded wheat), waffles, & vegetable products with sauces
	LSS	> 150-200	≤ 2 g	≤ 360 mg	≤ 12 g		
4. Soups and meal sauces	LSS	≤ 200	≤ 2 g	≤ 480 mg	≤ 6 g	≥ ½ serving of F/V/D/WG or ≥ 10% DV of any essential nutrient	<ul style="list-style-type: none"> – Tomato-based products allowed ≤ 12 g of total sugars/LSS to include sugars naturally occurring in tomatoes & those added to balance product pH
5. Seeds, nuts, and nut butters and spreads	1 oz or 2 tbsp	≤ 220	≤ 3.5 g	≤ 240 mg	≤ 4 g	≥ 1 oz protein equivalent	<ul style="list-style-type: none"> – For LSS < 1 oz or 2 tbsp, NTL & NCTE to be scaled proportionately
6. Meat, fish, and poultry products	LSS	≤ 120	≤ 2 g	≤ 480 mg	≤ 2 g	≥ 1 oz equivalent of meat, fish, or poultry, <u>and</u> ≥ 10% DV of any essential nutrient	<ul style="list-style-type: none"> – For LSS ≤ 1 oz, NTL reduced to ≤ 60 kcal, ≤ 1 g sat fat, ≤ 240 mg sodium and ≤ 1 g total sugars
7. Mixed dishes	LSS	≤ 280	≤ 2.5 g	≤ 540 mg	≤ 10 g	≥ ½ serving of F/V/D/WG or ≥ 10% DV of <i>two</i> essential nutrients	<ul style="list-style-type: none"> – Products include casseroles, burritos, pizzas, & sandwiches that do not meet FDA/USDA definition for <i>main dishes</i> – Items that contain ≤ 200 kcal and meet NTL criteria may qualify if they contain ≥ ½ serving of F/V/D/WG or ≥ 10% DV of any essential nutrient

8. Main dishes and entrées	LSS	≤ 350	≤ 10% kcal	≤ 600 mg	≤ 15 g	≥ 1 serving of F/V/D/WG or ≥ ½ serving of F/V/D/WG <u>and</u> ≥ 10% DV of <i>two</i> essential nutrients	- Items must meet FDA/USDA definition for <i>main dishes</i>
9. Small meals	LSS	≤ 450	≤ 10% kcal	≤ 600 mg	≤ 17/12 g (See notes)	≥ 1½ servings of F/V/D/WG or ≥ 1 serving of F/V/D/WG <u>and</u> ≥ 10% DV of <i>three</i> essential nutrients	- Small meals contain multiple items but do not meet FDA/USDA definition for <i>meals</i> - Meals must meet FDA/USDA definition for <i>meals</i> - Sugars from <u>one</u> qualifying milk/milk substitute, <u>or</u> qualifying yogurt/yogurt-type product, <u>or</u> qualifying fruit (i.e., without added sugars) <u>or</u> qualifying F/V juice are not counted in the 17 g or 20 g total sugars limits
10. Meals (entrée and other items including a beverage)	Meal	≤ 600	≤ 10% kcal	≤ 740 mg	≤ 20/15 g (See notes)	≥ 2 servings of F/V/D/WG or ≥ 1½ servings of F/V/D/WG <u>and</u> ≥ 10% DV of <i>three</i> essential nutrients	- When <u>two</u> qualifying items are present, the sugars from both items are not counted in the total sugars limit, but the limits (to account for all other items) are reduced to 12 g (small meals) and 15 g (meals) - All other NTL criteria for small meals and meals (calorie, sat fat, and sodium limits) must be met

Trans fat. The criteria for *trans* fat is 0 g labeled for all categories. For foods in the meat and dairy categories served as individual foods or as part of composite dishes or meals (e.g., soups, mixed dishes, entrees, meal-type products), naturally occurring *trans* fats are excluded.

Exemptions

- o Sugar-free mints and gum.
- o The following products also are exempt from the nutrient criteria specified above, except as indicated in notes to Categories 9 & 10:
 - Fruit products without added sugars;
 - Vegetable products without added fats and which meet FDA regulations for “very low sodium;”
 - Beverages, including bottled waters, that meet FDA regulations for “low calorie” and “very low sodium” (diet sodas are excluded from this exemption).

Abbreviations and Glossary

DV: Daily Value.

Essential Nutrients: Those occurring naturally in foods (or that are added to foods to meet standards of identity or to restore nutrients lost in processing), and for which a DV has been established. If fortification is used to meet the criteria, the nutrient must be a DGA 2010 nutrient of concern (calcium, fiber, potassium, vitamin D) or a nutrient that is required to be listed on the Nutrition Facts Panel (iron, vitamins A & C).

F/V/D/WG: Any combination of fruits, vegetables, non/low-fat dairy, and/or whole grains.

LSS: Labeled serving size.

NA: Not applicable.

NCTE: Nutrient components to encourage are F/V/D/WG or Essential Nutrients.

NTL: Nutrients to limit are calories, saturated (sat) fat, *trans* fat, sodium and total sugars.

Qualifying F/V Juice: Any fruit or vegetable juice or blend that contains no added sugars and meets the requirements of Category 1.

Qualifying Flavored Milk/Milk Substitute/Yogurt/Yogurt-type Product: These are products that meet the Category 2 criteria for milk/milk substitutes, or yogurt/yogurt-type products.

RACC: Reference amount customarily consumed.

Serving(s): See USDA Food Group Serving Equivalents.

Total Sugars: Include naturally occurring and added sugars.

Calories

In the individual food and beverage categories, all foods contain no more than 200 calories (except two peanut butters that contain 210 calories). Main dishes do not exceed 350 calories and meals do not exceed 600 calories.

Sugars

The CFBAI participants have reduced the sugar content in many products. For example, General Mills reformulated its Yoplait Trix Yogurt to decrease total sugar content by 18%. And, in 2010, PepsiCo advertised Quaker Chewy granola bars with 25% less sugar.

The breakfast cereal category is notable for sugar reductions. Before the CFBAI, some cereals advertised to children had 15 or 16 grams of sugars per serving. Under the CFBAI, participants committed to advertise only cereals with no more than 12 grams added sugars per serving (or a comparable limit based on percentage of calories or weight). This required many products to be reformulated to meet that limit. Since 2007, sugar reductions have ranged from about 10% to more than 25%.¹ Now, all program cereals contain \leq 12 grams of sugars, and, as seen in Figure 1, most cereals (86%) contain \leq 10 grams per serving.²

Sugar Content (grams)	2009	2010	First Half 2011	Second Half 2011
≤ 9	16%	16%	24%	33%
≤ 10	41%	52%	84%	86%
11 or 12	60%	48%	16%	14%

Sodium

Virtually all participants have been reducing sodium in their products. Before the CFBAI, some products advertised to children had over 900 mg of sodium. Now the highest is 750 mg, but most have far less. The participants have reduced the sodium content of dozens of soups, canned pastas, and other items, generally to FDA "healthy" levels. Examples include:

- Kraft Foods reduced the sodium limit for *Lunchables* products advertised to children from 960 mg, to 840 mg, and most recently to 600 mg.
- Burger King Corp. reformulated its Chicken Tenders in 2009, reducing sodium by about 1/3.

¹ However, even before the sugar reductions occurred, in the diets of the U.S. population ages 2 years and older, only 3.8% of added sugars came from ready to eat (RTE) cereals according to NHANES 2005-2006 data. Dietary Guidelines For Americans 2010, Figure 3-6, at p. 29. Similarly, for children aged 4-12, RTE cereals account for only 4% of calories on average and 5% of total sugars. Centers for Disease Control and Prevention and National Center for Health Statistics, *National Health and Nutrition Examination Survey Data (2005-06)*, available at <http://www.cdc.gov/nchs/nhanes.htm>. Further, empirical data consistently show that frequent cereal eaters (including eaters of pre-sweetened cereal) tend to have healthier body weights. A.M. Albertson *et al.*, *The Relationship between Ready-to-Eat Cereal Consumption Categorized by Sugar Content and Body Measures in American Children: Results from NHANES 2001-06*, 23 FASEB Journal 550.22 (April 2009) (Meeting Abstracts). While further improvements are possible, this category already has changed substantially since 2006.

² This results from reformulation and from business decisions to remove some cereals from the list CFBAI maintains of products that may be advertised to children. The cereals also have strong nutritional characteristics: all contain no more than 130 calories; all provide essential vitamins and minerals; virtually all meet FDA's definition for "healthy;" the vast majority are low in fat and a "good" source of Vitamin D; and two-thirds provide at least 8 grams of whole grains.

- In 2009, Campbell Soup Company reformulated its Pepperidge Farm Goldfish Grahams to meet its CFBAI nutrition standards, reducing the saturated fat content to 1 gram from 2 grams.
- Burger King Corporation transitioned to fat-free milk from low-fat milk in 2009 in all of its restaurants, resulting in a significant reduction in fat in approved Kids Meals that feature milk.
- ConAgra Foods reduced the saturated fat content of its Kid Cuisine Cheese Blaster Mac-n-Cheese by 40%, as shown in Figure 4.

Figure 4. Saturated Fat Reduction in ConAgra Foods Kid Cuisine Cheese Blast Mac-n-Cheese



Nutrients and Food Groups to Encourage

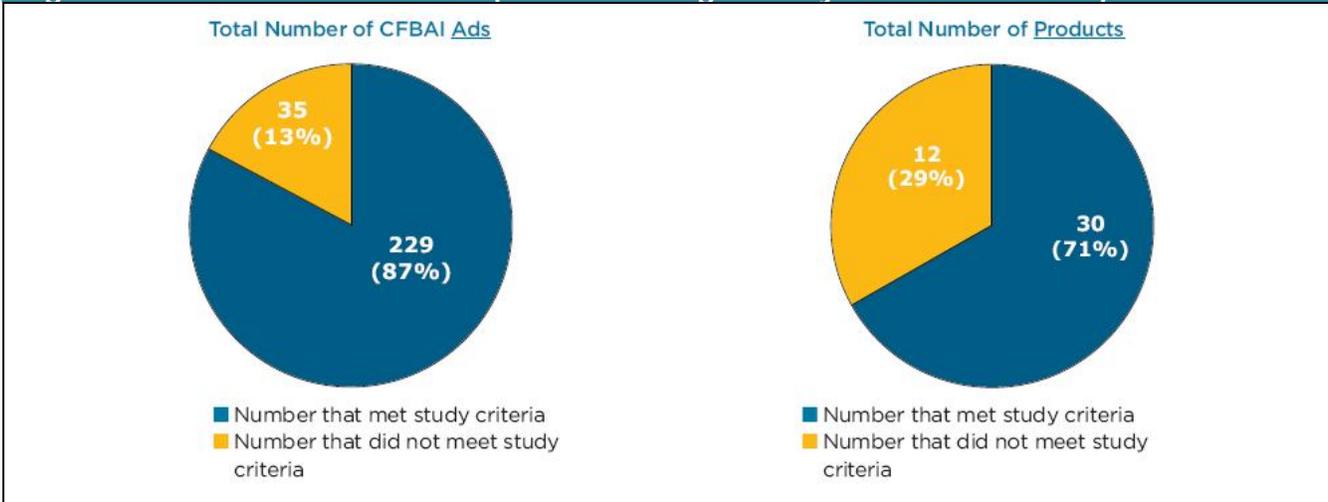
The CFBAI participants' use of meaningful nutrition standards is driving increases in nutrients and food groups to encourage (fruits, vegetables, low-fat dairy and whole grains). The CFBAI's informal study of advertising during a sample of children's television programming in 2010 found that the CFBAI participants' child-directed ads usually are for, or include, nutrient dense foods that also meet reasonable limits on calories, fats, sugars and sodium.³ See figure 5.

Our analysis also showed that participant ads included the following:

- *Apples*. 24% included apples or applesauce.
- *Milk*. 21% included milk.
- *Vegetables*. 8% were for products that included at least a half-serving of vegetables.
- *Whole Grains*. 27% were for products or meals that included at least 8 grams of whole grains/50% whole grains.
- *Yogurt Products*. 12% featured low-fat yogurt products.

³ The CFBAI conducted an analysis of advertising on 38.5 hours of children's television programming that aired during May-June 2010. We determined whether products provided at least a good source (10% DV) of at least one shortfall nutrients for children (calcium, potassium, fiber, magnesium or Vitamin E) as identified in the Dietary Guidelines for Americans 2005 (DGA), or provided at least a half-serving of food groups the 2005 DGAs recommend for increased consumption.

Figure 5. Nutrients & Food Groups to Encourage: Analysis of Ads on Sample of Kids' TV



The CFBAI participants' product developments and reformulations to increase nutrients and food groups to encourage are numerous, and include the following examples:

- Burger King Corporation implemented its CFBAI pledge with the launch of a new product, BK® Fresh Apple Fries, which provides one serving of fruit.
- General Mills, Inc. added Frosted Toast Crunch to its approved product list. Frosted Toast Crunch contains 9 grams of sugars and 11 grams of whole grains. The product also is an excellent source of iron and a good source of vitamin A, vitamin C and calcium.
- Kellogg Company has reformulated nearly 80% of its U.S. ready-to-eat cereals to be a good or excellent source (20% DV) of fiber as part of a company-wide initiative. The fiber content of Kellogg's Apple Jacks cereal increased from 1 gram to 3 grams, as shown in Figure 6. It also reformulated Apple Jacks cereal to contain at least 8 grams of whole grains per serving.

Figure 6. Fiber Increase in Kellogg's Apple Jacks



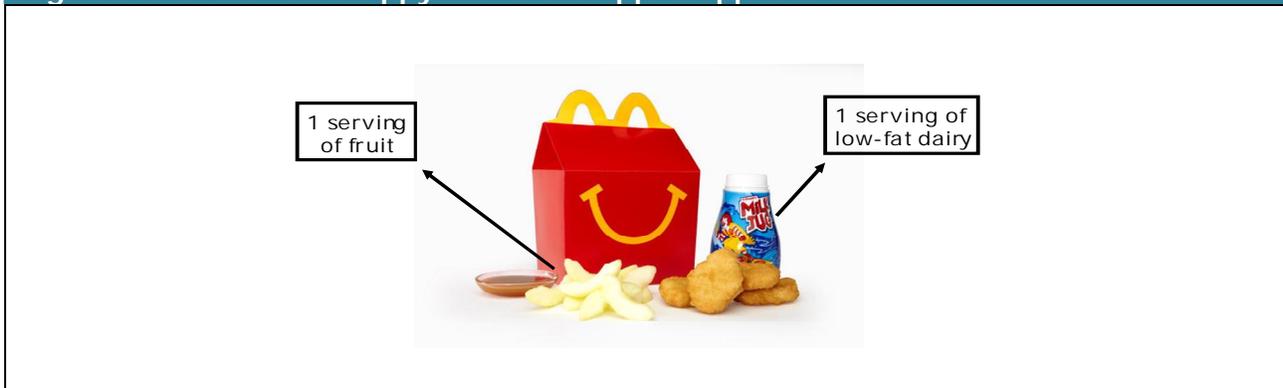
- Kraft Foods' *Lunchables* products offer many positive elements including whole grain, fruit, and dairy. The *Lunchables with Fruit* line provides one full serving of fruit. The product depicted in Figure 7 provides 5 grams of whole grains, reduced fat dairy, one serving of fruit, and 100% white meat turkey; is an excellent source of Vitamin A and Vitamin C, a good source of protein and calcium; and has 280 calories per serving.

Figure 7. Kraft Foods New Lunchables with fruit



- McDonald's Happy Meal advertising now always includes apple dippers and low-fat milk, as seen in Figure 8. McDonald's announced in July 2011 that by the end of the first quarter of 2012, Happy Meals nationwide automatically will include Apple Slices (½ serving) and a new smaller size of French Fries (1.1 ounces) as side dishes along with a customer-selected entrée and beverage. If customers prefer apples only, two bags of apples will be available upon request.

Figure 8. McDonald's Happy Meal with apple dippers and low-fat milk



- Nestlé USA updated its nutrition criteria in 2009 to require that all products provide at least 10% DV of one nutrient. The company also added a calcium-fortified low-fat milk product to its approved product list. This milk product provides 40% of the calcium DV, 10% more than regular low-fat milk.
- PepsiCo, Inc. introduced Tropicana Tropolis Real Fruit Squeezers, a blend of fruit puree and fruit juice that is a good source of fiber and provides 100% DV of calcium. PepsiCo also developed new Quaker Chewy Bars with 10 grams of whole grains per serving (also low in sodium and a good source of calcium). In the fall of 2011, PepsiCo added three oatmeal varieties to its CFBAI product list: Quaker Instant Oatmeal - Original Flavor, Quaker Old Fashioned Oats, and Quaker Quick Oats. All are 100% whole grain and have one or zero grams of sugar per serving.
- Post Foods increased Vitamin D in two products to 20% and 25% from 10%. All Post Foods cereals advertised to children are an "excellent" source of Vitamin D. It also launched a new product, Pebbles Boulders, with 12 grams of whole gains per serving.