

## Executive Summary

The incidence of childhood obesity in the United States has increased dramatically over the last twenty-five years<sup>1</sup>. In 2009, in response to this crisis, the U.S. Congress, through the 2009 Omnibus Appropriations Act (H.R. 1105) (Congress), established the Interagency Working Group on Food Marketed to Children (IWG). The IWG is comprised of representatives from four groups: the Centers for Disease Control (CDC), the Federal Trade Commission (FTC), the Food and Drug Administration (FDA), and the United States Department of Agriculture (USDA).

Congress charged the IWG with “conducting and develop[ing] recommendations for standards for the marketing of food when such marketing targets children who are 17 years old or younger or when such food represents a significant component of the diets of children”.

This report suggests that there is no empirical evidence that the IWG’s proposed nutrition principles for foods marketed to children would help lower childhood obesity by (a) encouraging children to choose foods that make a meaningful contribution to a healthful diet; or (b) minimize[ing] consumption of foods with significant amounts of nutrients that could have a negative impact on health or weight ...” The proposed voluntary guidelines also raise questions over constitutionally protected free commercial speech in violation of the First Amendment of the U.S. Constitution and improper expansion of regulatory powers.

What we may conclude is that if the IWG recommendations for voluntary advertising bans stand, we can expect the following:

- The bans will not reduce the childhood obesity rate, because they do not address the specific variables that cause childhood obesity.
- The cost of reformulating food products will increase food prices.

“We should have no more regulation than the health, safety and security of the American people require. Every rule should meet that common-sense test.” Here, the proposed guidelines of the IWG do not meet this common-sense test and are not smart government.

—President Barack Obama,  
September 8, 2011

- Increased food prices will disproportionately impact low-income and minority families.
- The advertising ban will limit information that parents and nutritionists can access in order to make the best food choices.
- Jobs will be lost in agriculture, manufacturing, and marketing and will affect every state.

In his September 8, 2011 “American Jobs Act” address before a joint session of Congress, President Obama stated that “... there are some rules and regulations that do put an unnecessary burden on businesses at a time when they can least afford it.”<sup>2</sup> Additionally, President Obama stated that “We should have no more regulation than the health, safety and security of the American people require.<sup>3</sup> Every rule should meet that common-sense test.”<sup>4</sup>

Here, the proposed guidelines of the IWG do not meet this common-sense test and are not smart government.

The “Smart Government” approach would be to increase access to healthful and affordable foods by allowing the market to function, innovate, and compete, unhampered by ill-founded government regulations. Producers are bound by the demand of their consumers—and the market has delivered. Food and beverage producers continue to change their products in response to what consumers want, including: lower sodium, lower saturated fat, lower or zero *trans* fat, reduced sugar options, portion-controlled options, and even gluten-free options. Producers and the competitive markets have actually increased the number, variety, and quality of healthful products on the market. All of this has occurred at lower costs to the consumer. Between 1950 and 2000, the relative price of food fell, on average, by 0.2 percentage points per year<sup>5</sup>. But restricting the ability to advertise would only hinder consumers’ access to information about food options and limit their ability to make the best choices for their families.

The proposed guidelines would not serve their purpose: lowering childhood obesity. This almost certain failure is not only due to the lack of any real correlation between advertising and obesity, but even more, the result of the proposal’s bizarre ban on advertising foods positively associated with healthier body weights, such as cereal and some yogurts, while inexplicably ignoring calories as an integral part of the obesity equation. Additionally, the IWG’s proposed guidelines wholly fail to address the lack of access to healthful and affordable foods in low-income, rural, and underserved communities or variables like household structure, education and language, poverty, employment status and income, and various state indicators like

housing, health environment, food environment, and physical environment, all of which influence the probability of being obese for children aged 6 to 17 years old.

Given the above, one may reasonably argue that policies that address the childhood obesity epidemic in communities most at risk, such as promoting policies that will encourage the elimination of food deserts will be more effective in promoting the welfare of children at risk than sweeping new “voluntary” bans on the advertising and marketing of foods to children.



Photograph by Erinn Cosby

“[T]he IWG’s proposed guidelines wholly fail to address the lack of access to healthful and affordable foods in low-income, rural, and underserved communities or variables like household structure, education and language, poverty, employment status and income, and various state indicators like housing, health environment, food environment, and physical environment, all of which influence the probability of being obese for children aged 6 to 17 years old.”