

# THE SMALL BUSINESS ADVOCATE

## In This Issue

Research, Reg Updates, and  
News Available on Advocacy  
Webpage . . . . .1

Postal Service Expands Scope  
of PMB Designation . . . . .4

Advocacy Celebrates 25 Years  
at October Symposium . . . . .6

Nominees Sought for 2002  
Small Business Week Awards .8

### Message from the Acting Chief Counsel

Trade Associations Help  
Advocacy Make the Case for  
Small Businesses . . . . .3

### Legislative Update

Equal Access to Justice Act  
Turns 21 . . . . .2

### Telecommunications and Internet Update

E-Commerce and Internet  
Policy News . . . . .5

WIPO Promotes Global  
Protection of Intellectual  
Property . . . . .5

### Economic News

RFP Seeks Small Business  
Researchers . . . . .7

2001 State Small Business  
Profiles Out . . . . .7

## Website Delivers Research, Reg Updates, and News to Advocates and Small Businesses

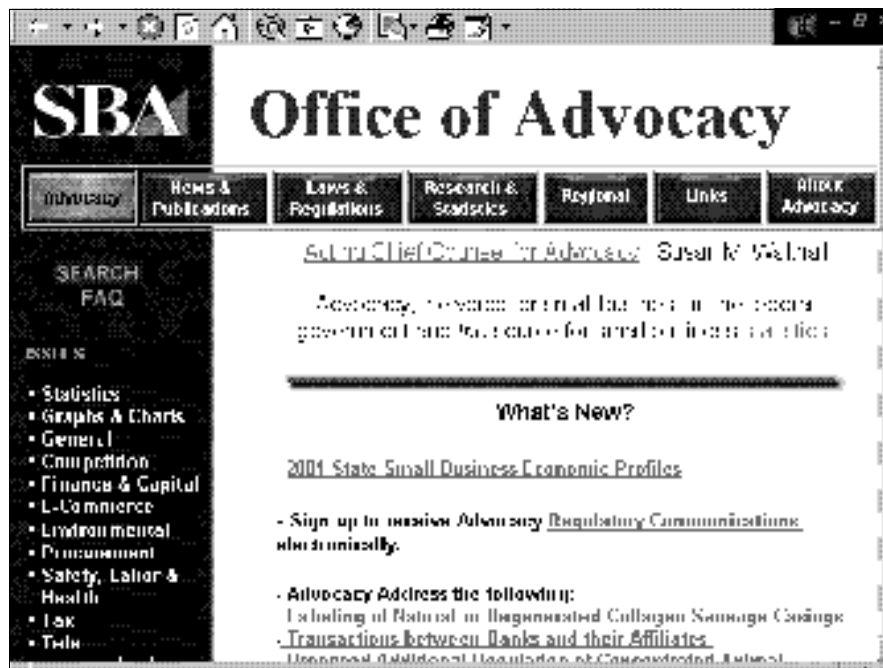
Like many government agencies, the Office of Advocacy has scaled back the amount of information it makes available in print, while greatly increasing the total information available via electronic means. Since Advocacy has saved so many trees through the judicious use of print publishing, it's worth spending a few column inches to make readers aware of the useful things you can find on the home page, [www.sba.gov/advo](http://www.sba.gov/advo).

Advocacy's three offices, Economic Research, Interagency Affairs, and Information, generate new information daily. The website is regularly updated with their materials, and a prominent "What's New" section lets return users quickly check for new material.

Here are some highlights of what you'll find on the webpage now. **Economic Research.** New postings in this department include the *2001 State Small Business Economic Profiles*, the *Small Business FAQ*, and the proceedings of Advocacy's July conference, "Tax Policy and Small Business." Newly posted research summaries and contract research reports include *Economic Policy and the Start-up, Survival, and Growth of Entrepreneurial Ventures* and *Wealth and Income: How Did Small Businesses Fare from 1989 to 1998?*

**Interagency Affairs.** Interagency's advocates regularly post the official comment letters to federal agencies that they generate in the course of

*Continued on page 2*



## Equal Access to Justice Act Turns 21

Twenty-one years ago, Congress attempted to level the legal playing field between the federal government and small business when it passed the Equal Access to Justice Act (EAJA). EAJA allows small businesses and others to collect attorney's fees from the government should they prevail in lawsuits against federal regulatory action. By allowing financially limited parties to recover fees and costs, Congress intended to enable victims of abusive federal conduct to seek vindication of their rights, to reduce the incidence of governmental abuse, and to foster precision, efficiency, and fairness in interpretation and enforcement of regulations.

Unfortunately, EAJA has not had the desired effects. In fact, according to a General Accounting Office study of a 12-year period, small litigants barely recovered one-third of what was originally estimated for the year in which EAJA was enacted. Moreover, 92 percent of applications granted were primarily for claims filed by individuals against the Social Security Administration—hardly the result Congress had in mind.

The reasons for EAJA's failure to deter capricious regulatory enforcement and for small businesses' reluctance to use its fee recovery mechanisms are detailed in a new report issued by the Office of Advocacy, *The Equal Access to Justice Act and Small Business—Analysis and Critique*. The report

was compiled by Nathan X. Cohen during an internship with Advocacy during summer 2001. The full text is available on Advocacy's website, [www.sba.gov/advo](http://www.sba.gov/advo).

Three reasons for EAJA's failure to rein in overzealous agencies stand out. First, the simple lack of filings by small business suggests that most successful litigants do not know that they are entitled to recover fees and costs. Second, EAJA contains a cap on attorney's fees, a cap that is not contained in other fee-shifting statutes, such as the Civil Rights Attorney's Fees Awards Act. The arbitrarily low hourly fee cap discourages competent counsel from taking on and winning these cases. Third, EAJA does not allow shifting fees and costs back to the federal government in cases where the government's position is found to be "substantially justified," even if it is not the prevailing party in the case.

Congress is considering legislation to reform the EAJA. Advocacy would like to see the Act made more small business friendly and, ultimately, to make it easier for small businesses to recover attorney's fees and costs when they prevail in lawsuits against capricious and unreasonable federal government regulatory action.

For more information, contact Jennifer Smith, assistant chief counsel, at (202) 205-6532, or via e-mail at [jennifer.smith@sba.gov](mailto:jennifer.smith@sba.gov).

### Website, from page 1

their regulatory review. Major topics this year are antitrust and trade; environment; procurement; safety, labor, transportation and health; tax issues; telecommunications; agriculture; and banking.

**Office of Information.** *The Small Business Advocate*, Advocacy's press releases, and major publications are all featured.

**Three Listservs Launched in 2001.** The website is also the place to sign onto any of Advocacy's three Listservs. A Listserv allows users to subscribe electronically to receive e-mails notifying them of newly published documents. Advocacy's most recent addition is the regulatory communications Listserv. Subscribers to it receive notices of each newly posted offi-

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cial regulatory comment letter, congressional testimony, and the annual report on the Regulatory Flexibility Act. Advocacy's two other Listservs—for the *Small Business Advocate* newsletter and the office's press releases—already have hundreds of subscribers. They may eventually help reduce the number of print copies of the newsletter and press releases.

*Continued on page 3*

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## Message from the Acting Chief Counsel

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### Trade Associations Help Advocacy Defend Small Business

by Susan M. Walthall, Acting Chief Counsel, Office of Advocacy

A key part of the Office of Advocacy's mandate is to enlist the support of private organizations, especially trade associations, in our efforts on behalf of small business. Trade associations are our eyes and ears in the small business community—alerting us to the real-life effects of proposed federal regulations and legislation and letting us know the kinds of small business issues that need further research.

One of my goals as acting chief counsel is to continue to work closely with small-business and industry-specific trade associations to improve our advocacy efforts. Advocacy would be far less effective representing the views and interests of our nation's 20 million small business owners before federal policymakers if we did not hear from and work with the trade associations that speak for small business and industries in which small firms predominate.

Large companies usually have Washington staff or other experts available to brief federal agencies, and they have sufficient staff to adhere to proposed regulations. As a result, agencies often perceive problems from the point of view of big business and fashion "one-size" solutions that fit large companies. Small firms have a difficult time allocating resources to educate federal agencies on their industry or

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**Our door is always open to the small businesses of America. We are ready and waiting to hear from you.**

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business. That is where my office can help, and why it is important that Advocacy work closely with trade associations, so that we can correct the "one-size-fits-all" approach by voicing the position of small business.

We meet regularly with about 200 trade association executives to brief them on our efforts, small business economic research, and the regulatory agenda. In return, trade associations:

- Identify business owners to work with us;
- Provide vital information on their industries and the effects of regulation and legislation; and
- Join us to bolster small businesses' representation before the federal government.

Through this close working relationship, Advocacy taps into a tremendous resource. No matter what issue we are working on, there is a trade association ready to help. Our staff benefits greatly from their readiness to provide company tours, explain complex processes, describe the economics of their industry, and provide information

for rulemakings.

Trade associations and small business leaders can make use of our resources, as well. For instance, trade associations can use our network of contacts to set up meetings with federal regulators. Many times these rulemakers are hard to identify, and without direct contact they may not fully understand the impact of proposed regulations on small business and specific industries. Advocacy can help bridge that "information gap."

Also, my office holds conferences on the latest research that affects small business. We bring together academic researchers, government officials, and trade association representatives to examine the effects of proposed policy on small business. These conferences differ from the usual academic fare in that they focus directly on the real benefits or harm to small business and specific industries, not academic theory.

Advocacy wants, and needs, to have a close working relationship with trade associations and industry groups. Our Office of Information is the point of contact for trade associations, small business leaders, and small business owners who want to become more involved in the public policy process. Our door is always open to the small businesses of America. We are ready and waiting to hear from you.

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#### Website, from page 2

##### Homegrown and Accessible to All.

Government rules on accessibility for people with disabilities have been a guiding principle in the design of Advocacy's home page. Most documents on it are in multiple formats: html, text-only, and PDF (Acrobat). The webpage also contains links to Acrobat accessi-

bility tools for converting PDF files, and its html code has been enhanced to facilitate reading by speech synthesizing devices used by the visually impaired.

The webpage contains volumes of information, yet it's well organized and easy to navigate. This is the work of two talented Advocacy staffers, Nancy Ing and Brian

Headd. Nancy, in particular, has kept abreast of SBA's evolving web policy and is largely responsible for transforming the office's two-dimensional reports into multifaceted electronic resources. So when a web user sends an e-mail to Advocacy's webmaster ([advocacy@sba.gov](mailto:advocacy@sba.gov)), it finds its way to the appropriate staff member instantly.



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## Regulatory Update

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### Postal Service Requires More Businesses to Use PMB Designation

Since 1999, the U.S. Postal Service has sought to regulate small businesses that use private mailboxes and the mailing centers that provide them. As a result, beginning on Aug. 26, 2001, small businesses who make use of a commercial mail receiving agency (CMRA) must include the designation “PMB” (private mailbox) or “#” in their addresses. The rule also requires the small business and the CMRAs to file several new forms with the Postal Service.

The Postal Service asserts that the rule is necessary to address mail fraud. But, as the Office of Advocacy and the Postal Service’s own inspector general have pointed out, the only evidence that fraud is occurring at CMRAs is anecdotal. Indeed, in a report issued April 9, 2001, the Postal Service’s Office of Inspector General (OIG) found that the Postal Service did not “demonstrate the need for regulatory change by presenting statistical or scientific data to support claims of mail fraud conducted through private mailboxes.” In addition, the Postal Service “did not show how the regulations would curb fraud, assess the impact of the proposed rules on receiving agencies and private boxholders, or consider alternatives to revising the rules.” The report also found that the rules required significant changes that could cost receiving agencies and their customers millions of dollars.

Instead of listening to its own inspector general, the Postal Service has published a new rule that widens the scope of who must use the PMB or “#” designation to include centers providing certain basic office services (deemed “office business centers,” or OBCs).

An OBC customer receiving mail at the OBC address is considered to be a CMRA customer for

postal purposes (i.e., required to use the designation PMB or “#”) if each of the following is true:

1. The customer’s written agreement with the OBC does not provide for the full-time use of one or more of the private offices within the OBC facility; and

2. The customer’s written agreement with the OBC does not provide all of the following:

- The use of a private office within the OBC facility for at least 16 hours per month;
- Full-time receptionist service and live personal telephone answering service during normal business hours and voice mail service after hours;
- A listing in the office directory, if available, in the building in which the OBC is located; and

- Use of conference rooms and other business services on demand, such as secretarial services, word processing, administrative services, meeting planning, travel arrangements, and videoconferencing.

Advocacy will continue to oppose these Postal Service regulations (see box).

#### For More Information

For more information about the Postal Service regulations, contact Jennifer Smith, assistant chief counsel, at (202) 205-6532 (ph.) or [jennifer.smith@sba.gov](mailto:jennifer.smith@sba.gov) (e-mail). The full text of Advocacy’s comments can be found at [www.sba.gov/advo/laws/comment.html](http://www.sba.gov/advo/laws/comment.html).

#### Advocacy’s Comments to the Postal Service

*Advocacy has fought the CMRA rule since it was first proposed in 1999, and it continues to do so. In a letter to the postal service dated August 16, 2001, Acting Chief Counsel Susan M. Walthall wrote:*

“Office business centers, like commercial mail receiving agencies, offer an alternative to the traditional U.S. Postal Service mailbox rental and traditional business practices. The OBC allows a home based business to select the level of services that it requires to fulfill its business needs. With today’s technological advances, it may not be necessary to have secretarial services or a full time office space to be successful. Failure to utilize all of the options found in the traditional office is an indication of astute business planning, not fraud. To punish a business for only obtaining the services that it needs discriminates against smaller businesses that cannot afford a more extensive set-up.

“As with the CMRA rule, the Postal Service has not demonstrated the need for regulatory change or that the change will in any way curb fraud. It has merely made an arbitrary decision that customers who do not spend a certain amount of time in an office environment are engaging in fraudulent activities. To say that a customer is more likely to commit fraud because its OBC does not provide, for example, voice mail after hours, is ludicrous. . . .

“Before expanding the CMRA rule to include certain OBC customers, the Postal Service should follow the findings of the OIG and perform some sort of study to determine if these regulations are indeed necessary and, if so, whether they are the proper manner for addressing the problem. By failing to do so, the Postal Service is continuing to engage in an arbitrary and draconian rulemaking process.”

## WIPO Promotes Global Protection of Intellectual Property

Intellectual property—inventions, designs, trademarks, software, and artistic, musical, and literary works—plays an increasingly important role in society and commerce both in the United States and internationally. The rights of creators and owners of intellectual property may be protected worldwide through a system of patents, trademark registrations, copyrights, licenses, and other means.

The World Intellectual Property Organization (WIPO) is an international organization that promotes the creation, use, and protection of intellectual property. WIPO is based in Geneva, Switzerland, and is one of the United Nations' 16 specialized agencies. WIPO administers 21 international treaties dealing with different aspects of intellectual property protection and counts 177 nations as members. In

addition to administering international treaties, WIPO assists governments, organizations, and the private sector; provides services for international applications for intellectual property rights; monitors developments in the intellectual property field; harmonizes and simplifies relevant rules and practices; and exchanges information on intellectual property. For example, WIPO administers the Patent Cooperation Treaty, which enables a business or individual inventor to file for patent protection in multiple countries using a single coordinated application package.

WIPO has recently launched a new website to reach out to the small and medium-sized business community, [www.wipo.int/sme](http://www.wipo.int/sme). The SMEs website (SMEs stands for “small and medium-size enterprises”) considers intellectual property

issues from the perspective of small and medium-sized businesses.

The SMEs website:

- Provides information on whether and how to protect, manage, license, and enforce intellectual property rights;
- Explains the significance of intellectual property and reasons why it should be an integral part of a company's business strategy; and
- Provides an introduction to intellectual property issues related to e-commerce, e.g., selecting Internet domain names, designing and building websites, trading online, and distributing content on the Internet.

For questions on intellectual property issues, contact Jonathan Pawlow, assistant chief counsel, (202) 205-6951 (phone); or via e-mail at [jonathan.pawlow@sba.gov](mailto:jonathan.pawlow@sba.gov).

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## Recent Developments in E-Commerce and Internet Policy

by Christopher B. White, Office of Advocacy Intern

Advocacy's e-commerce webpage has been newly updated. It is located at [www.sba.gov/advo/laws/is\\_ecomm.html](http://www.sba.gov/advo/laws/is_ecomm.html). The webpage provides information on federal regulatory and legislative actions that affect e-commerce. Many important changes have occurred in e-commerce during the past year.

In November 2000, the Internet Corporation for Assigned Names and Numbers (ICANN) selected seven new top-level domains (TLDs) to be included in the Internet's domain-name system. Before these TLDs become operational, the operator or sponsor of each of them must reach a contract with ICANN. Out of the seven introduced, only *.biz*, *.info*, and *.name* are operational. The remaining four; *.pro*, *.aero*, *.coop*, and *.museum* are expected to finish their contracts by fall.

Also in November, U.S. organizations were authorized to sign on

to the U.S.-EU Safe Harbor Privacy Framework. A safe harbor allows companies to avoid interruptions in their electronic business dealings with the EU and to avoid prosecution by European authorities under European privacy laws.

Safe harbor programs are industry self-regulatory guidelines that, if adhered to, are deemed to comply with the Children's Online Privacy Protection Act (COPPA). Three programs have been approved by the Federal Trade Commission under the terms of COPPA. These include the Children's Advertising Review Unit of the Council of Better Business Bureaus (CARU), the children's arm of the advertising self-regulatory program; the Entertainment Software Rating Board (ESRB); and TRUSTe, an Internet privacy seal program.

Taxation of e-commerce transactions continues to provoke extensive debate in Congress. Legis-

lation being considered currently would prohibit states from imposing taxes on Internet access and electronic commerce.

Congress is also considering opening up federal resources to promote e-commerce. The Rural America Broadband Deployment Act would make loans available to eligible entities for the purpose of providing broadband service in rural areas. The Electronic Commerce Enhancement Act of 2001 would require the National Institute of Standards and Technology to assist small businesses in integrating and utilizing electronic commerce technologies and business practices.

For questions on any of these issues, contact Eric Menge, (202) 205-6949 (ph.) or via e-mail at [eric.menge@sba.gov](mailto:eric.menge@sba.gov).

## Advocacy to Celebrate 25 Years at October Symposium

It's been 25 years since Public Law 94-305 authorized the creation of an Office of Advocacy within the U.S. Small Business Administration. The office opened for business in 1976, with a charge to "examine the role of small business in the American economy...; measure the direct costs and other effects of government regulation on small business...; determine the impact of the tax structure on small businesses...; study the ability of financial markets and institutions to meet small business credit needs...; [and] make such other recommendations as may be appropriate to assist the development and strengthening of minority and other small business enterprises...."

A celebration and symposium on Advocacy's history and future, "Advocacy at 25: Looking Back, Looking Ahead," will be held October 23 at the U.S. Chamber of Commerce. Small business owners and advocates, along with representatives of business organizations, trade associations, and federal and state agencies, will join current and former staff of the Office of Advocacy—chief counsels, chief economists, assistant advocates, and others—to assess past accomplishments and propose future directions for the Office of Advocacy.

The one-day conference will feature guest speakers including former chief counsels, congressional leaders on small business issues, and outstanding small business researchers. The day's events will include a series of breakout sessions on research directions and regulatory developments, concluding with a celebratory reception.

For further information, visit Advocacy's website, [www.sba.gov/advo](http://www.sba.gov/advo), or contact Luckie Wren at (202) 205-6533 (ph.) or [luciette.wren@sba.gov](mailto:luciette.wren@sba.gov) (e-mail).



In its 25-year history, Advocacy has had four Senate-confirmed chief counsels. Pictured here in 1994 are Thomas Kerester, Milton Stewart, Jere Glover, and Frank Swain (left to right).

### Office of Advocacy Milestones

- 1970 President Nixon signs executive order 11518, "providing for the increased representation of small business concerns before departments and agencies of the United States Government."
- 1976 Congress passes and President Carter signs P.L. 94-305, establishing the Office of Advocacy.
- 1978 Milt Stewart becomes the first Senate-confirmed chief counsel.
- 1979 Advocacy holds first state legislative conference on small business issues.
- 1980 Advocacy spearheads efforts for the first White House Conference on Small Business.  
Congress passes the Regulatory Flexibility Act (RFA), charging Advocacy to monitor federal agency compliance with the law.  
Congress passes the Small Business Economic Policy Act, requiring an annual report on the state of small business, prepared by the Office of Advocacy.
- 1981 Congress passes the Small Business Innovation Development Act to encourage federal contracting with small business innovators.  
Frank Swain begins 8-year tenure as the second confirmed chief counsel.
- 1992 Tom Kerester sworn in as the third confirmed chief counsel.
- 1994 Jere Glover begins as the fourth confirmed chief counsel.
- 1996 Congress enacts the Small Business Regulatory Enforcement Fairness Act, strengthening the RFA.
- 2000 Advocacy reports on 20 years' experience with the RFA.
- 2001 Advocacy celebrates 25 years with a review of past accomplishments and a look to the future.

### Latest RFP Uses Paperless Bidding System

In order to perform research most efficiently, the Office of Advocacy uses staff and contractors. Working with top-notch contractors is just as important as having a top-notch staff. This is something that has been recognized since Advocacy's first research contracts in the early 1970s.

Researchers who submit proposals for the Office of Advocacy's newest round of research proposals will make use of a new electronic posting system, FedBizOpps ([www.eps.gov/spg](http://www.eps.gov/spg)). The FedBizOpps webpage contains synopses of all the RFP topics, as well as complete bid packages for each. Researchers will no longer need to request the bid package from SBA's Procurement Office, they can download it from FedBizOpps. However, the completed proposal must still be submitted in paper form. The deadline for proposals for the current five topics is Sept. 24, 2001.

Here are the latest topics:

- *What is Necessary to Induce Non-participating Small Firms to Offer Healthcare Coverage?* The contractor will identify reasons why different types of firms offer health coverage and suggest changes that would induce non-providers to provide coverage.

- *Small Firms and Health Insurance Coverage.* Small and large firms often differ in their health care coverage. The contractor will create a unique analysis of the issues, problems, solutions or likely scenarios regarding health care coverage by firm size.

- *Small Firms and Pension Coverage.* Small and large firms also differ in terms of pension coverage. A contractor is sought to create a unique analysis of issues, problems, solutions or likely scenarios related to pension coverage by firm size.

- *Impact of Utility Price Shocks and Supply Interruptions.* The contractor will study the impact of

price and reliability shocks in the electricity market. To a lesser extent, the telecommunications market should also be analyzed.

- *Graduate Research.* Ph.D. candidates and other graduate students are invited to submit proposals to obtain funds for small business research.

The FedBizOpps system is easy to use. The topics can be found by selecting "search FBO posts." Under "search by agency," select "Small Business Administration," and click the "start search" button. All contracts that are currently open for bidding will be displayed.

The Office of Advocacy will evaluate the proposals based on the

criteria stated in the bid packages, and SBA will inform the bidders of the results. Although the process of procuring government contracts can be daunting, with the FedBizOpps, two steps have been removed from the bureaucratic process.

Questions concerning the RFP should be directed to Billy Jenkins, procurement specialist, (202) 205-7077 (phone); (202) 481-0487 (fax); or via e-mail at [billy.jenkins@sba.gov](mailto:billy.jenkins@sba.gov).

### State Small Business Profiles Available

Are you in need of small business data for your state or trying to find data for a business plan? The Office of Advocacy has just published the 2001 edition of the *Small Business Profiles by State*. The report contains data on small businesses at the state and national level (including the District of Columbia). Each state profile consists of two pages of information on small businesses in the state, including state data on:

- Growth of small businesses;
- Number of businesses;
- Number of jobs created;
- Revenues generated;
- Women and minority-owned businesses;
- The number of banks by bank asset size class; and
- Business turnover (firm births, terminations, and bankruptcies).

*Small Business Profiles* is a great fact book for writing speeches, creating business plans, and advocating for small businesses in your state. The complete set of state reports is online at [www.sba.gov/advo/stats/profiles](http://www.sba.gov/advo/stats/profiles). More detailed information on the data series can be found in *Small Business Economic Indicators* and *Small Business Lending in the United States*, both located at [www.sba.gov/advo/stats](http://www.sba.gov/advo/stats).

## Nominees Sought for 2002 Small Business Week Awards

National Small Business Week 2002 is tentatively scheduled for May 5-11, 2002. The highlight of the week is the presentation of awards spotlighting the outstanding contributions of small business persons and advocates at the district, state, and national levels. SBA needs your help to obtain a large pool of qualified nominations from which to select the Small Business Award winners. ***Nominations close Nov. 9, 2001.***

The complete nomination guidelines can be found at [www.sba.gov/opc/pubs/nominations2002.pdf](http://www.sba.gov/opc/pubs/nominations2002.pdf).

### To Submit Nominations

Nominations must be submitted to the nearest U.S. Small Business Administration district office in your state or territory. All nominations must be post-marked or hand delivered no later than Nov. 9, 2001.

### Award Categories

#### Small Business Advocate Awards

- Accountant Advocate of the Year
- Entrepreneurial Success
- Financial Services Advocate of the Year
- Home-Based Business Advocate of the Year
- Minority Small Business Advocate of the Year
- Small Business Exporter of the Year
- Small Business Journalist of the Year
- Veteran Small Business Advocate of the Year
- Women in Business Advocate of the Year
- Young Entrepreneur of the Year

#### Small Business Person Awards

- Small Business Person of the Year

#### Phoenix Awards

- Small Business Disaster Recovery
- Outstanding Contributions to Disaster Recovery

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