

MEMO# 15812

March 27, 2003

REVISED INSTITUTE SURVEY OF IRA PROTECTION IN BANKRUPTCY

[15812] March 27, 2003 TO: OPERATIONS MEMBERS No. 11-03 PENSION MEMBERS No. 14-03 PENSION OPERATIONS ADVISORY COMMITTEE No. 18-03 TAX MEMBERS No. 21-03 TRANSFER AGENT ADVISORY COMMITTEE No. 36-03 RE: REVISED INSTITUTE SURVEY OF IRA PROTECTION IN BANKRUPTCY The Institute has updated its survey of the treatment of individual retirement accounts in bankruptcy under state law. The attached survey covers the extent to which traditional and Roth IRAs, SIMPLE accounts, and SEP-IRAs¹ are protected from the claims of creditors under state law when an individual files for bankruptcy protection. As we have noted in the past, the law in this area continues to change frequently as a result of both legislative and judicial activity. Some of the more significant changes in state laws since the last survey are as follows: (1) Colorado, Iowa, New Hampshire, New Jersey, Oklahoma, Pennsylvania, South Dakota, and Tennessee have amended their statutes to provide specific protections for Roth IRAs; and (2) other changes have been reflected in the entries for Arkansas, Indiana, Iowa, Kansas, Louisiana, Maine, Mississippi, New Hampshire, Oklahoma, South Dakota, Tennessee, and Vermont. In addition, relevant case law developments have been added in the endnote citations for each state. Because this information is provided in summary form and the area is one in which the law is not settled, this survey is intended to serve as a reference guide, but not as legal advice. Further research or consultation with legal counsel is recommended. ¹ Previous surveys have also included an analysis of the protection of Education IRAs (now known as Coverdell Education Savings Accounts) in bankruptcy. The Institute is considering a separate survey addressing the bankruptcy status of Coverdell ESAs and education savings plans under section 529 of the Internal Revenue Code. ² Finally, please note that Congress continues to consider significant federal bankruptcy reform legislation. Such legislation includes language that would extend protection under the federal bankruptcy code to IRAs and other retirement savings plans. The Institute has supported this aspect of the legislation and will inform members if it is signed into law. Kathy D. Ireland Senior Associate Counsel Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 15812, or call the ICI Library at (202) 326-8304 and request the attachment for memo 15812. Attachment (in .pdf format)