

**MEMO# 10794**

March 12, 1999

# **BANKRUPTCY BILL INCLUDES PROTECTIONS FOR RETIREMENT PLAN ASSETS**

[10794] March 12, 1999 TO: PENSION COMMITTEE No. 13-99 RE: BANKRUPTCY BILL INCLUDES PROTECTIONS FOR RETIREMENT PLAN ASSETS

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Representative Gekas (R-PA) and numerous co-sponsors introduced H.R. 833, titled the "Bankruptcy Reform Act of 1999." Section 203 of the bill clarifies that retirement funds, including those held in IRAs, Roth IRAs, 403(b)s, 457s and other plans qualified under 401(a) of the Internal Revenue Code, are protected from creditors in the bankruptcy process. Specifically, where such funds are in a retirement plan that has received a favorable determination letter from the IRS, those funds are presumed to be exempt from the bankruptcy estate; where the plan has not received a favorable determination letter, the funds are presumed exempt from the estate if the debtor demonstrates that the plan is in "substantial compliance" with the Internal Revenue Code. Additionally, retirement funds directly transferred from one retirement account to another under section 401(a)(31) of the Code or otherwise, continue to be exempt from the bankruptcy estate, as do distributions that qualify as eligible rollover distributions under section 402(c) of the Code or that are able to be rolled over within the 60-day rollover period. Third, the bill would permit plan loans to continued to be repaid from a debtor's wages during the bankruptcy process, unless the loan was made during the one-year period preceding the filing of the bankruptcy petition. These provisions are similar to those which the Institute supported last year. We anticipate that the bankruptcy reform bill will actively be considered this year. Russell G. Galer Senior Counsel Attachment