

MEMO# 10043

June 22, 1998

1998 INSTITUTE SURVEY OF IRA PROTECTION IN BANKRUPTCY

[10043] June 22, 1998 TO: OPERATIONS MEMBERS No. 15-98 PENSION MEMBERS No. 36-98
TAX MEMBERS No. 16-98 PENSION OPERATIONS ADVISORY COMMITTEE No. 22-98
TRANSFER AGENT ADVISORY COMMITTEE No. 30-98 RE: 1998 INSTITUTE SURVEY OF IRA
PROTECTION IN BANKRUPTCY

The Institute is pleased to provide you with its revised summary of the treatment of individual retirement accounts in bankruptcy under state law. This year's state by state survey has been expanded to include the status of Roth, SEP, SIMPLE and Education IRAs under state bankruptcy laws and provides additional citations to relevant case law. The law in this area continues to change. Since our last survey, there were significant statutory changes in Delaware, Minnesota, Nevada, South Dakota, Virginia and Wyoming. Additionally, there were relevant judicial decisions in other states, including Georgia, Iowa, South Carolina and Texas. Because 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 investigation or consultation with counsel is recommended. With regard to Roth IRAs, please note that at this time no statute specifically protects the Roth IRA from creditors in bankruptcy proceedings. Certain of the statutes, however, as noted in the survey, are worded broadly enough so that they would likely be interpreted to protect Roth IRAs. With regard to Education IRAs, again, no statute specifically protects them by specific reference. Furthermore, because most relevant statutes relate to "retirement" plans and contracts, it is less likely that even broadly worded statutes will protect Education IRAs from creditor claims in the bankruptcy process. On the other hand, Education IRAs are beneficially owned by individuals under the age of 30 and, perhaps, may be less likely be part of a debtor's estate. Finally, please note that Congress currently is considering significant legislation that would substantially amend the federal bankruptcy code. Such legislation, if passed, may include a provision extending federal bankruptcy law protection to IRAs. The Institute has supported this aspect of the federal bankruptcy legislation and will inform members if it is signed into law. Russell G. Galer Senior Counsel Kathryn Ricard Assistant Counsel Attachment