

MEMO# 11757

March 24, 2000

REVISED INSTITUTE SURVEY OF IRA PROTECTION IN BANKRUPTCY

[11757] March 24, 2000 TO: OPERATIONS MEMBERS No. 7-00 PENSION MEMBERS No. 19-00
PENSION OPERATIONS ADVISORY COMMITTEE No. 21-00 TAX MEMBERS No. 12-00
TRANSFER AGENT ADVISORY COMMITTEE No. 15-00 RE: REVISED INSTITUTE SURVEY OF IRA
PROTECTION IN BANKRUPTCY

The Institute is pleased to provide you with its revised survey of the treatment of individual retirement accounts in bankruptcy under state law. This year's survey covers the extent to which traditional and Roth IRAs, SIMPLE accounts, SEP-IRAs and Education IRAs 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 fairly frequently as a result of both legislative and judicial activity. Some of the more significant changes in the law of the states are as follows: (1) many states have amended their statutes to provide specific protections for Roth IRAs (e.g., Alaska, Arizona, Connecticut, Florida, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Rhode Island, Vermont, Virginia and Washington); (2) some states have amended their statutes to provide specific protection for Education IRAs; and (3) both North Carolina and Vermont completely rewrote their statutes. Additionally, relevant case law reported since the last survey has been added in footnote 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. Finally, please note that Congress continues to consider significant federal bankruptcy reform legislation. Such legislation likely will include 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. Both the Senate and House of Representatives (H.R. 833) have passed bills and are expected to work out differences in conference in the near future.

Russell G. Galer Senior Counsel Attachment