

MEMO# 10513

November 30, 1998

MASSACHUSETTS LAW PROTECTS IRAS IN BANKRUPTCY

1 See Institute Memorandum to Operations Members No. 15-98, Pension Members No. 36-98, Tax Members No. 16-98, Pension Operations Advisory Committee No. 22-98 and Transfer Agent Advisory Committee No. 30-98, dated June 22, 1998. [10513] November 30, 1998 TO: OPERATIONS MEMBERS No. 33-98 PENSION MEMBERS No. 71-98 PENSION OPERATIONS ADVISORY COMMITTEE No. 65-98 TAX MEMBERS No. 41-98 TRANSFER AGENT ADVISORY COMMITTEE No. 79-98 RE: MASSACHUSETTS LAW PROTECTS IRAS IN BANKRUPTCY

The Massachusetts governor recently signed into law legislation that amends Section 34A of the Massachusetts code, which exempts retirement plans, annuities, SEPs and IRAs from a debtor's bankruptcy estate. The new law incorporates the following types of retirement plans and retirement accounts in the exemptions from a Massachusetts debtor's bankruptcy estate: - Retirement plans that are qualified under section 401(a) of the Code but are not subject to ERISA. This change clarified that owner-employee plans are protected from bankruptcy. Note that spouses of owner-employees may participate in the plan and the plan will still be treated as a single-participant plan; - 403(b) arrangements. Previously, the statute was unclear regarding whether 403(b) arrangements were included in a debtor's bankruptcy estate; and - Rollovers and transfers to individual plans. Specifically, the new law protects rollovers and transfers from the 5-year exception to the general bankruptcy protection rule. In other words, rollovers and transfers are not subject to the 5-year rule and are not included in the bankruptcy estate. This memorandum updates the 1998 Institute survey of IRA Protection in Bankruptcy.¹ We continue to request that members with information of any relevant legislation or court cases regarding the status of IRAs under state bankruptcy or creditor law contact Kathryn Ricard at (202) 215-3563 or Russ Galer at (202) 326-5835. A copy of the Massachusetts law is attached. Kathryn Ricard Assistant Counsel Attachment Note: Not all recipients of this memo will receive an attachment. If you wish to obtain a copy of the attachment referred to in this memo, please call the Institute's Library Services Division at (202)326- 8304, and ask for this memo's attachment number: 10513.