

# SOCIAL SECURITY AS INCOME

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**CMI:** 11 USC § 101 (10A)(B) - “Current Monthly Income” excludes social security benefits

**§407(a) of Social Security Act:** the right of any person to any future payment ... shall not be transferable or assignable ... and none of the moneys paid or payable shall be subject to execution, levy, attachment, garnishment or other legal process **or to the operation of any bankruptcy or insolvency law.**

## CHAPTER 7 ANALYSIS

**ABUSE:** 11 USC §707(b)(1) - court may dismiss a consumer Chap 7 case (or convert with debtor’s consent) if the granting of relief would be an “abuse of the provisions of this chapter.”

11 USC §707(b)(3)(B) - court should look to see if the “**totality of the circumstances**” of the debtor’s financial situation demonstrates abuse.

**CASES:** *In re Wanda Lewis* Case #17-31682-KCF (2018) [Chap 7]  
Denial of UST’s Motion to Dismiss under 707(b)

***EXCLUDE social security in “ability to pay” analysis:***

*In re Moriarty* 530 B.R. 637 (W.D.Va 2015)

*In re Cranmer* 697 F.3d 1314 (10<sup>th</sup> Cir)

*In re Suttice* 487 B.R. 245 (Bkcy C.D.Cal.2013)

***INCLUDE social security in “ability to pay” analysis:***

*In re Linton (ND Ohio 2020 #19-33609)*

*In re Calhoun* 396 B.R. 270 (Bkcy S.C. 2008) (“excessive budget” also in case)  
aff’d, 650 F3d 338 (4<sup>th</sup> Cir);

*In re Riggs* 495 B.R. 704 (Bkcy WDVa 2013);

*In re Booker*, 399 B.R. 662 (Bkcy WD Mo 2009).

## CHAPTER 13 ANALYSIS (including after conversion)

### Plan

**Confirmation:** 11 USC §1325(b)(1)(B): for plan to be confirmed: all of the debtor's projected disposable income (PDI) for the repayment period must be devoted to the plan. CMI defined in (b)(2), excluding SSI.

Section 1325(a)(3) of the Code provides that "a court shall confirm a plan if the plan has been proposed in good faith."

**Cases:** *In re Bruno* Case #17-34197-JKS (2018)

The Standing Trustee maintained that while Social Security income is not required to be included on Form 122C-1 under 11 U.S.C. §§ 101(10A)(B) and 1325(b)(1), the Debtors' failure to devote this income to fund their Chapter 13 plan constitutes a lack of good faith under § 1325(a)(3).

*Held:* "When a Chapter 13 debtor calculates his repayment plan payments exactly as the Bankruptcy Code and the Social Security Act allow him to, and thereby excludes [Social Security income], that exclusion cannot constitute a lack of good faith." BUT, this does not mean that Social Security income should be disregarded in all Chapter 13 good faith inquiries (using "totality of the circumstances" analysis).

*In re Bartelini* (Bankr. N.D.N.Y. 2010): combined motion in three Chapter 13 cases where Standing Trustee moved to dismiss for failure to include SSI in projected disposable income.

*Held:* "The relevant question given the Debtors' circumstances is not how to define "projected" for purposes of calculating their PDI, but rather whether SSI is ever to be included as disposable income subject to the reach of unsecured creditors in the wake of BAPCPA's amendments. The answer, quite simply, is no. In light of the BAPCPA amendments, it is settled law that, for individuals seeking bankruptcy relief, **SSI enjoys complete protection from the reach of unsecured creditors.**"