

Do I need to include my social security (retirement) income in the calculation of my plan payment in chapter 13 bankruptcy?

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It depends. It is a legal question that is playing out in the courts right now. If you live in the fifth or tenth federal circuit (Massachusetts is in the first circuit), and arguably in the sixth or eighth circuit, then the answer is no. Generally anywhere else it depends on the individual judge. And this will likely change in the future. A good local bankruptcy attorney in your area might know the status in your area.

This specific question is whether excluding social security benefits when calculating what your plan payment should be is legally considered "bad faith." In bankruptcy, there are two important places that your social security income could be included, one is on Form 22C that determines the length of your plan and possibly the amount that should be paid to unsecured creditors (for above-median income debtors), and another is on the Schedule I, which is used to help determine your plan payment. There is little dispute that social security income is not considered in the former (Form 22C), but there is a dispute whether it should be included in the latter (Schedule I). (This does not mean the income does not need to appear on the forms, just if the income is counted in the calculations.) Those that argue it is bad faith to not include social security income in the calculation point to the "totality of the circumstances" and that the debtors could pay more to their creditors. Those that argue it is excluded point to a portion of the bankruptcy code they say excludes it completely from income calculations in bankruptcy.

The two definitive federal circuit decisions on the issue that were rendered in the fifth and tenth circuits may be considered persuasive authority for other courts. The fifth circuit decision can be found [here](#). The tenth circuit decision can be found [here](#).

If you are planning on filing bankruptcy, there are many issues like the one described here that should be addressed. If you want to discuss your options, feel free to give us a call.

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