Fifth, the Social Security program has undergone significant changes since it was first enacted; and if history provides a lesson, it will be changed in the future and probably significantly. The past, of course, needs no clarification; the future prospects on the other hand are not at all certain, but there is today discussion of improved benefits, revision of the wage base, subsidizing benefits from general revenues, tying benefits to cost-of-living indices, and so forth.[4] Indeed, if there is anything certain about the Social Security program, it is that it will be changed by future Congresses. From both a theoretical and practical point of view, these prospective changes are of great significance. For example, if Congress greatly increases benefits disproportionate to private benefits, the role of private plans will be changed. If general revenues are tapped, the program loses a little more of its "insurance" aspect. This imponderable of future changes makes at least one point obvious—that the task of integrating private pensions with Social Security is not a one-shot problem, nor has it been in the past.

To try to sum up the above views, Social Security is clearly a kind of a hybrid affair which combines some of the elements of a government public assistance-welfare program (i.e., general revenues allocated to the needy in terms of subsistence benefits) and certain of those of a private annuity or insurance program where identifiable contributions or costs add up to specific future benefits. We conclude from this that comparability of Social Security to private plans is not only difficult in practical terms but is difficult conceptually as well. However, there is one basic facet of Social Security that is relevant in the design of private plans without reference to the hybrid character of Social Security; this is the level of benefits provided by law.

WHAT IS DISCRIMINATION

The purpose of the integration rule is to prevent discrimination, but before we can prevent it we should know what we mean by the term. In one context, as noted above, all compensation schemes are discriminatory. Pension plans being work-related income replacement schemes are no different; as presently constructed, they discriminate. But this discrimination is not forbidden by the law; in fact it is fostered in the sense that we deliberately encourage the orientation of both public and private plans as rewards for work performance. At the minimum then we start with the fact that discrimination does not mean simply providing retirees different absolute amounts of pension.

The next inquiry is: What is discrimination under the pertinent IRS regulations? The tax rules raise the question with respect to two categories—"classification of employees" and "contributions or benefits"—providing that there must not be discrimination in favor of employees who are officers, shareholders, supervisors, or highly compensated. It would appear then that if a plan favors these select groups it is discriminatory.

This leads to still another question which is particularly pertinent: How do we define a highly compensated employee? It would seem from the language of the law that these higher-paid employees might include anyone who is on the payroll at a high salary with undefined responsibilities as well as the recognizable "top brass" of a company who simply do not fit the other designations of officers, shareholders, or supervisors. On the other hand, it could be interpreted to include all those who earn more than the median or average wage or salary level for a given company. However, it would seem that the intent of the rule is far removed from employees earning at or a little above the Social Security wage base such as $6,000 to $7,000 and the rule should not be read to mean just "higher paid" employees.[5] At any rate, it is certain these employes would argue that they are not highly compensated.

As a point of fact the "highly compensated" employee will vary from company to company. Nonetheless, if we divide a company's employees into three compensation categories, some pertinent observations can be made. The lower-income employees, such as those earning less than the maximum Social Security wage base, are provided a "protection" against discrimination under Social Security by means of the disproportionate weighting in favor of lower-paid employees built into the system. The higher-paid employees of the firm—the top echelon—have protection outside the pension program since they are pro-

[4] Another example of suggested change was put forth by Secretary of Labor Wirtz in a recent speech on November 16, 1966, in which he suggested that perhaps "earned" benefits under Social Security might be utilized in advance by beneficiaries to pay for training.

[5] This view seems to be in keeping with the legislative history of the 1942 Revenue Act by which this discrimination ban was established.