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**THE LEGAL STATUS AND FUNCTIONS
OF
THE GENERAL ACCOUNTING OFFICE
OF THE
NATIONAL GOVERNMENT**

THE INSTITUTE FOR GOVERNMENT RESEARCH

Washington, D. C.

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THE LEGAL STATUS AND FUNCTIONS
OF
THE GENERAL ACCOUNTING OFFICE
OF THE
NATIONAL GOVERNMENT

BY
W. F. WILLOUGHBY
DIRECTOR, INSTITUTE FOR GOVERNMENT RESEARCH

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PREFACE

The Budget and Accounting Act, 1921, contained two distinct parts, the one providing for the establishment of a budget system for the national government and the other for an independent General Accounting Office, presided over by a Comptroller General, which, in addition to taking over the duties then being performed by the Comptroller of the Treasury and the six Auditors for the Departments, had imposed upon it other exceedingly important functions. Though these two parts are so distinct that they could have been made the subject matter of separate bills without making a change in their wording, they had the common purpose of strengthening and making more effective general, or overhead control of the administration of the financial affairs of the national government. Part I, having to do with the establishment of a budget system, sought to achieve this end by centralizing in the hands of the President responsibility for the determination of the requests that should be made upon Congress for the grant of funds and by giving him the special agency, in the Bureau of the Budget, through which he might meet this responsibility. Part II, having to do with the establishment of the General Accounting Office, sought to strengthen the hands of Congress in performing its duties as a board of directors by giving to it an agency which should be independent of the executive departments and directly responsible to it, through which it could assure itself that its orders as contained in general statutes and appropriation acts were being rigidly complied with. The two

agencies, the Bureau of the Budget and the General Accounting Office, thus constitute two great organs for financial control, the one serving as an agency for executive control and the other as an agency for legislative control.

In his volume on "The National Budget System: With Suggestions for Its Improvement," recently published, the author has described the action that has been taken in putting into effect the first part of the Budget and Accounting Act, the manner in which the system thus established has worked in practice, and what steps in his opinion still remain to be taken to perfect the system. In the present volume he is attempting to do the same thing for the second part of the act. The two volumes are thus intended to supplement each other, and together show how this great problem of financial control is being met by the national government and the further action required in order that the methods of its solution may be perfected.

To one who has not studied the subject, the organization and work of such an agency as the General Accounting Office might seem to involve little more than a study in the technique of accounting and thus to be of value only to those interested in the details of administrative procedure. In point of fact the establishment of this agency has given rise to questions of the most profound political moment. It has brought into the domain of the practical administration of public affairs such fundamental problems as the separation of powers, the distinction between executive and administrative functions, the extent to which final powers of control over administrative action should, or constitutionally can, be vested in a legislative agency, the authority whose rulings in

respect to the construction of important features of public law should be followed by the administrative services, whether that authority should be the Attorney General of the United States or the Comptroller General of the United States, and the power of the courts to review administrative determinations. On these fundamental issues it is hardly an exaggeration to say that the government at the present time is split in two, both as regards the situation from the legal standpoint and from what is desirable in the interest of the efficient conduct of public affairs. It is doubtful whether as grave issues of public policy in respect to the operation of the government have arisen in many years. Certainly the author knows of none which have arisen within his experience, which has extended back over a period of more than thirty years.

It is to these issues that the present volume is almost exclusively devoted, since the details of the history, organization, and procedure of the General Accounting Office are given in another volume published by the Institute for Government Research in its series of Service Monographs of the United States Government. It is hoped that this study will assist in the solution of these problems even if the action recommended by the author does not in all cases commend itself to those having responsibility for action.

W. F. WILLOUGHBY.

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THE LEGAL STATUS AND FUNCTIONS OF THE GENERAL ACCOUNTING OFFICE OF THE NATIONAL GOVERNMENT

CHAPTER I

LEGAL STATUS OF THE GENERAL ACCOUNTING OFFICE

The General Accounting Office was created by Title III of the Budget and Accounting Act, 1921¹ to take over the duties formerly performed by the Comptroller of the Treasury and the six Auditors for the Departments and to perform certain other functions which will be described in the chapters that follow. Undoubtedly the most important feature of this act was, not the consolidation of the powers and duties of the seven officers that have been mentioned in a single Comptroller General of the United States, or the enlargement of the functions of that officer, but the provision that the service to be directed by him, the General Accounting Office, should be independent of the executive departments and directly responsible to Congress for the manner in which it performed its duties. This provision represents a revolution in respect to the system that had theretofore prevailed since the organization of the government for the settlement and adjusting of the financial accounts of the government.

Notwithstanding that the intent of this act was to effect this change, there has been little appreciation on

¹ 42 Stat. L., 20, 23.

the part of the public and even on the part of administrative officers of the government of the full purport of this action and of the consequences that follow from it. There is still great confusion in the public mind regarding the precise position that the new office has in the scheme of governmental agencies, and there is a wide divergence of opinion within the government itself both as regards the fact itself and the legality and propriety of the attempt to set up a legislative agency of this character. The establishment of this office has raised issues that vitally affect the whole system of administration of public affairs. They involve such fundamental issues as the relationship between the legislative and executive branches of the government, the powers and duties of all executive officers, including the President himself, the conclusiveness of administrative determinations or the rights of persons believing their rights to be violated to appeal to the courts for redress, the location of final authority in the construing of the public law governing the organization and work of the executive departments; and the determination of the service that shall be responsible for the performance of certain categories of work having to do with the orderly administration of the financial affairs of the government. These issues cannot be intelligently handled without full understanding of the peculiar status of the General Accounting Office. A consideration of this status must, therefore, precede any attempt to consider the specific functions of this new office.

Prior to the passage of the Budget and Accounting Act, 1921, there can be no doubt that the offices of Comptroller of the Treasury and the six Auditors of the Treasury for the Departments were parts of the ad-

ministrative branch. They were subordinate offices in one of the executive departments and their heads were appointed by the President and could be freely removed by that officer. Any doubts regarding this have been definitely settled by the recent decision of the Supreme Court of the United States in the famous Myers case.³ Though it was recognized that the functions of the Comptroller of the Treasury were of a quasi-judicial character and that it was desirable that as a general proposition he should exercise his functions free from outside direction, the situation was one where he was a subordinate of the Secretary of the Treasury and through that officer of the President of the United States and held office at the will of the latter. There was thus always present the possibility that these officers might make known to the Comptroller their will in respect to the construction of law as authorizing or not certain classes of claims, or the exercise by the Comptroller of his powers to prescribe the manner in which accounting transactions of the government should be handled. And there was always the knowledge on the part of the Comptroller that if his action ran too strongly counter to the wishes of the Secretary of the Treasury and particularly the President, he incurred the risk of being removed from office. The fact that the President can enforce compliance with his wishes through the exercise of his powers of dismissal where he does not have legal authority to order the action to be taken, is illustrated by the dismissal by President Jackson of his Secretary of the Treasury, who refused to meet his wishes in respect to the removal of public deposits from the Bank of the United States. It is a

³ *Myers v. The United States*, Supreme Court of the United States, October 25, 1926.

matter of common report that a later President threatened similar action in the case of the officer now under consideration. To quote from a carefully prepared statement of James M. Beck, then holding the office of Solicitor General of the United States,*

I am told that during the first administration of President Cleveland, when Mr. Garland was Attorney General, the officer who exercised the powers afterward conferred upon the Comptroller of the Treasury, declined to follow an opinion of the Attorney General. Mr. Garland brought the matter to the attention of the President who summoned the officer and told him, in substance that the Attorney General was the legal adviser of the President, and that if the Comptroller was unwilling to be guided by his advice his resignation would be at once accepted. After that interview the Comptroller saw the matter in a different light.

The situation was thus one where the audit of administrative accounts was performed by an officer of the administrative branch, who in the performance of his duties was subject to possible pressure on the part of officers whose accounts it was his duty to examine and pass upon.

The desirability of giving an independent status to the accounting officers was at least once urged by the Comptroller of the Treasury. Thus Comptroller of the Treasury Tracewell, in his annual report for 1911, said:

As the amount of money expended each year thus increases, it is a matter of supreme importance that the branch of the government to which is entrusted the accounting for this vast sum should be maintained at

* Statement of James M. Beck, Solicitor General at a Hearing of the Committee on the Judiciary of the House of Representatives with reference to two bills regarding the authority of the Comptroller General, May 27, 1924.

the greatest possible state of efficiency and in the most economical way possible to attain. To be as efficient as it can be made, and with the idea of economy in the operations always uppermost, it should be independent in fact as well as in name. Congress makes its appropriations for the support and maintenance of the Government for specific purposes and with many limitations and restrictions surrounding their expenditure. Necessarily these expenditures are left largely to the initiative and discretion, within these limitations and restrictions, of the heads of the executive departments and to the heads of independent offices and commissions not under the executive departments.

It is asking too much of human nature to expect the same independence of thought and action, as regards the enforcement of these limitations and restrictions, from officers whose tenures largely depend upon the good will of their superior officers who initiate these expenditures, as if they were not laboring under such a handicap. . . . In my judgment, and speaking from an experience covering a considerable period of time, the accounting officers of the Government should be directly responsible to Congress, and to Congress alone, for their official actions in interpreting its laws and in the stating of accounts thereunder.

One of the fundamental purposes of the Budget and Accounting Act, 1921, was to correct this condition of affairs, which was deemed to be an anomalous one.⁴ To this end it abolished the offices of Comptroller of the Treasury and the six Auditors of the Treasury for the Departments and provided that their powers and duties should be vested in a new office to be known as the General Accounting Office, which office, it declared;

⁴It may be noted that in the case of the states the system is generally, if not universally, one where the auditor is not a part of the administrative branch or at least is not subject to executive direction and control through the constitutional provision that he shall be elected directly by the people.

“ shall be independent of the executive departments and under the control and direction of the Comptroller General of the United States,” and that the powers and duties so conferred upon this office shall “ be exercised without direction from any other officer.”

To make this independence of the Comptroller General effective, the act, though providing that he and the Assistant Comptroller General shall be appointed by the President, expressly withdraws from the President the power of dismissing them from office except as he concurs in action initiated by Congress. The sections (301 and 303) of the act providing for the appointment and tenure of office of the Comptroller General and Assistant Comptroller General read:

There shall be in the General Accounting Office a Comptroller General of the United States and an Assistant Comptroller General of the United States, who shall be appointed by the President of the United States with the advice and consent of the Senate

Except as hereinafter provided in this section, the Comptroller General and the Assistant Comptroller General shall hold office for fifteen years. The Comptroller General shall not be eligible for reappointment. The Comptroller General or the Assistant Comptroller General may be removed at any time by joint resolution of Congress after notice and hearing, when, in the judgment of Congress, the Comptroller General or Assistant Comptroller General has become permanently incapacitated or has been inefficient, or guilty of neglect of duty, or of malfeasance in office, or of any felony or conduct involving moral turpitude, and for no other cause and in no other manner except by impeachment When a Comptroller General or Assistant Comptroller General

attains the age of seventy years he shall be retired from his office.

In view of the desire and intent of Congress that the General Accounting Office should be an agency independent of the executive and directly responsible to it, it would have seemed logical that its head should have been selected by Congress in some manner. To this method of selection there were, however, two objections. The first was that objection might be raised on constitutional grounds to the attempt by Congress to exercise the power of appointment of an officer of this character and that, whether this objection was valid or not, a provision for the appointment by Congress of the Comptroller General and Assistant Comptroller General would be sure to give rise to discussion and might jeopardize the success of the bill. The second was that there was doubt whether the action of one Congress could be made binding upon another, with the consequence that if the Comptroller General and Assistant Comptroller General were appointed by Congress their effective tenure of office might be limited to two years and the danger thus incurred of making the selection of this officer subject to partisan political influence, a result which all were agreed would be exceedingly unfortunate. It was accordingly decided to vest the appointment of these officers in the President, but to give to them a tenure of office analogous to that of federal judges in the sense that they were not removable by the President.

The extent to which Congress sought in the framing of this act to give complete independence of action to the Comptroller General and Assistant Comptroller General is shown by the fact that it not only eliminated the

President's power of removal but also limited the power of Congress itself to act except for cause and then only "after notice and hearing." After setting forth that either of these officers may be removed when he "has become permanently incapacitated or has been inefficient, or guilty of neglect of duty, or of malfeasance in office, or of any felony or conduct involving moral turpitude," the words are added, "and for no other cause and in no other manner except by impeachment."

At the time that this bill was under consideration in Congress and since its enactment, the question has been raised as to whether Congress could constitutionally, not merely limit, but destroy the power of the President to dismiss an officer of this character. The bill as first drafted and passed by Congress provided that the method of removal of the Comptroller General and Assistant Comptroller General, where cause for action was found to exist, should be by concurrent resolution, a concurrent resolution differing from a joint resolution in that it does not need the approval of the President while the latter does.

This bill, which passed both Houses, was vetoed by President Wilson on the ground that its provisions restricting the President's power of removal of the Comptroller General and Assistant Comptroller General were unconstitutional. In his veto message of June 4, 1920, he said: *

I am returning without my signature H. R. 9783 "An Act to provide a national budget system, an independent audit of public accounts and for other purposes." I do this with the greatest regret. I am in entire sympathy

* This message, Mr. Houston, President Wilson's Secretary of the Treasury, informs us in his memoirs, "Eight Years in President Wilson's Cabinet," was written by him.

with the objects of this bill and would gladly approve it but for the fact that I regard one of the provisions contained in Section 303 as unconstitutional. This is the provision to the effect that the Comptroller General and the Assistant Comptroller General, who are to be appointed by the President with the advice and consent of the Senate may be removed at any time by a concurrent resolution of Congress after notice and hearing, when, in their judgment, the Comptroller General or Assistant Comptroller General is incapacitated or inefficient, or has been guilty of neglect of duty, or of malfeasance in office, or of any felony or conduct involving moral turpitude and for no other cause and in no other manner except by impeachment. The effect of this is to prevent the removal of these officers for any cause except by impeachment or a concurrent resolution of Congress. It has, I think always been the accepted construction of the Constitution that the power to appoint officers of this kind carries with it, as an incident, the power of removal derived from the Constitution. The section referred to, not only forbids the Executive to remove these officers, but undertakes to empower the Congress by a concurrent resolution to remove an officer appointed by the President with the advice and consent of the Senate. I can find in the Constitution no warrant for the exercise of this power by Congress. There is certainly no express authority conferred, and I am unable to see that authority for the exercise of this power is implied in any express grant of power. On the contrary I think its exercise is clearly negatived by section 2 of Article II. That section, after providing that certain enumerated officers and all officers whose appointments are not otherwise provided for shall be appointed by the President with the advice and consent of the Senate, provides that the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments. It would have been within the constitutional power of the Congress, in creating these offices, to have vested the power of appointment in

the President alone, in the President with the advice and consent of the Senate or even in the head of a department. Regarding as I do the power of removal from office as an essential incident to the appointing power I cannot escape the conclusion that the vesting of this power of removal in the Congress is unconstitutional and therefore I am unable to approve the bill. I am returning the bill at the earliest possible moment with the hope that the Congress may find time before adjournment to remedy this defect.

As this message was received the day before the day fixed for adjournment, Congress found it impossible either to pass the bill over the President's veto or to modify it so as to meet the President's objection. Upon the next Congress assembling on April 11, 1921, the bill was immediately reintroduced and passed, receiving the approval of President Harding on June 10, 1921, no change being made in it affecting the power of removal of the Comptroller General and Assistant Comptroller General except that the method of removal by Congress should be by joint resolution instead of by concurrent resolution. This change, of course, in no way met the objections of President Wilson, its only effect being to make still more difficult the removal of these officers, since the affirmative action of the President as well as Congress is required for such removal. The President is still without authority to initiate proceedings for removal, that lying with Congress; and his only participation in the matter is that of preventing removal by refusing to sign the joint resolution unless his refusal is overridden by Congress through the passage of the resolution over his veto. Under the law as it now stands on the statute books, he has no greater power to remove the Comptroller General and the Assistant Comptroller Gen-

eral than he had under the bill vetoed by President Wilson.

It will thus be seen that Congress refused to accept the reasoning of President Wilson and in this was sustained by President Harding who signed the bill. So far as the act now in force is concerned, Congress achieved its purpose of making these officers completely independent of the executive power.

Notwithstanding this victory by Congress, there are many who still hold that President Wilson was correct in his position and that the act as it now stands is unconstitutional in so far as it attempts to destroy the President's power to remove the Comptroller General and the Assistant Comptroller General. At the time that the Myers case was pending in the Supreme Court of the United States, it was the general opinion at Washington that one of the important issues involved in this case was that of the power of the President to remove the Comptroller General and Assistant Comptroller, regardless of the provisions of the Budget and Accounting Act, on the theory that if the Court held that the power of the President to remove postmasters appointed by him could not be curtailed by Congress, the same reasoning would apply to the attempt by Congress to limit the President's power to remove the Comptroller General and the Assistant Comptroller General. The decision in this case, as is well known, was that Congress has no power to restrict the power of the President to remove executive officers appointed by him, and that any act of Congress seeking to do this was unconstitutional and therefore void. This decision thus raises again the important question of the effective independence of the Comptroller General of executive influence and pressure.

Analysis of the situation shows that the issue here presented is wholly that of the status of the General Accounting Office. If its status is that of an executive agency, even though it may be, as it is declared by law to be, independent of the executive departments, there is no escape from the decision in the Myers case; and the President has the same power of removal of the directing heads that he formerly enjoyed in respect to the old Comptroller of the Treasury and the six Auditors of the Treasury for the Departments. If, on the other hand, this office is a legislative agency, the decision in the Myers case is without any controlling or even persuasive force. That the decision in the Myers case has reference solely to executive officers, is clearly brought out in the opening paragraph of Chief Justice Taft's opinion, which reads:

This case presents the question whether, under the constitution the President has the exclusive power of removing executive officers of the United States whom he has appointed by and with the advice and consent of the Senate.

To the writer, it would appear that a convincing case can be made in favor of the contention that the General Accounting Office is a legislative and not an executive agency. That Congress intended it to be such, is evident from the purpose that Congress had in view in creating the office, the discussion that took place in Congress while the bill was under consideration, and the language employed in the act itself. Not only is it expressly declared by the act that the office shall be "independent of the executive departments," that the Comptroller shall exercise his duties "without direction from any other officer,"

and that he shall report directly to Congress, but running through the act are provisions directing the office to act as the agent of Congress for investigating the conduct of affairs by the executive departments and establishments and recommending action by which a more efficient and economical conduct of affairs by such executive agencies may be enforced. Such, for example, is the section (312) of the act which provides that:

He [the Comptroller General] shall make such investigations and reports as shall be ordered by either House of Congress or by any committees of either House having jurisdiction over revenue, appropriations, or expenditures. The Comptroller General shall also, at the request of any such committee, direct assistants from his office to furnish the committee such aid and information as it may request.

The Comptroller General shall specially report to Congress any expenditure or contract made by any department or establishment in any year in violation of law.

He shall submit to Congress reports upon the adequacy and effectiveness of the administrative examination of accounts and claims in the respective departments and establishments and upon the adequacy and effectiveness of departmental inspection of the offices and accounts of fiscal officers.

In general, it may be said that a reading of the whole act in so far as it has to do with the General Accounting Office shows that Congress was convinced of the need that it should have an agency of its own and directly dependent upon it, through which it might more effectively assure itself that the executive agencies were not only complying with the law but also conducting their affairs in an efficient and economical manner.

This intention on the part of Congress may be admitted and yet the position be taken that Congress was without constitutional authority to create any such agency. Though this position may be taken, it is hard to see how it can be maintained. Congress is the fund raising and fund granting authority. Its revenue and appropriative acts are but orders to the administration to collect certain revenues and to make certain expenditures for certain persons and subject to certain limitations. Responsibility for the giving of orders does not end with their issue. It is the duty of the body giving them to take the action necessary to assure itself that there is full compliance with its orders. This means that it must in some way see that no money issues from the treasury except in pursuance of orders given by it in its appropriation acts and that all moneys that do issue shall be applied only to objects authorized and shall be expended in the manner and subject to the directions and limitations set forth by it. While the responsibility is that of Congress, it must of necessity make use of an agency for this purpose, either a committee or a special agency such as the General Accounting Office. The fact that Congress has decided upon a special agency instead of a committee, which would in turn have to provide itself with a "technical staff to assist it in the performance of its duties, in no way affects the principle involved or the status of the technical staff.

That Congress can constitutionally provide for subordinate agencies to exercise on its behalf legislative powers delegated to it, is formally established and illustrated in the case of the Interstate Commerce Commission. In support of this position that such agencies, and particularly the General Accounting Office, are legislative

and not executive agencies, may be cited the following comments on the decision in the Myers case by Ex-Solicitor General of the United States James M. Beck, who, it will be remembered, argued that case in the Supreme Court on behalf of the contention that the powers of the President to dismiss officers appointed by him could not be constitutionally restrained.⁹

Moreover the decision does not decide whether or not there may not be a class of officers who are not in strictness executive officers. For example, the Federal Trade Commission is chiefly a fact-finding commission to aid Congress in formulating legislation. The Interstate Commerce Commission is a fact-finding commission which discharges the so-called legislative duty of imposing reasonable rates upon carriers. The Comptroller General is regarded as the special representative of Congress in seeing that its appropriations are faithfully disbursed.

Can the President remove such quasi-legislative officials? This decision is not conclusive upon this point, and properly so, for no case of this character was before the court. The Supreme Court of Pennsylvania has held that a Public Utility Commissioner is an agent of the Legislature and not of the Executive Department. Whether the Supreme Court of the United States will make the same distinction is for the future to determine.

If one takes account of the logical need by Congress of an agency through which it can determine whether its orders in respect to the raising and expenditure of public funds are properly carried out, the fact that Congress has undoubtedly sought to set up such an agency in the General Accounting Office and that in other fields legislative agencies have been set up, that, as Ex-Solici-

⁹ *New York Times*, November 7, 1926.

tor General Beck has pointed out, the Comptroller General is regarded as the special representative of Congress, that the decision in the Myers case referred only to the power of the President to remove executive officers, and that even this decision was supported by a divided opinion of the court, that Mr. Beck who, in that case represented the side maintaining that the power of the President to dismiss officers appointed by him could not be constitutionally restricted, recognizes that there may be officers who are legislative rather than executive agents, and that this position has been sustained by the decision of the highest tribunal of at least one of the states; if one gives thought to these several points it must be held that, at least presumptively, the present status of the General Accounting Office is that of a legislative and not an executive agency and should be so regarded until the contrary is definitely declared by the Supreme Court of the United States. The fact that the Comptroller General and the Assistant Comptroller General are appointed by the President no more means that these officers should necessarily be regarded as executive officers than that the judges of the federal judiciary, who likewise hold office through appointment by the President, should be so regarded.

CHAPTER II

GENERAL FUNCTION OF THE GENERAL ACCOUNTING OFFICE AS AN ORGAN OF LEGISLATIVE CONTROL OF THE ADMINISTRATION

In considering the work of a government agency it is desirable to distinguish clearly between its functions and its activities. The former have to do with the fundamental purposes for which the agency is set up and maintained; the latter to the specific work done by the service in seeking to meet its functions. Not until its functions are known can one intelligently consider the activities.

In our consideration of the legal status of the General Accounting Office it has been pointed out that the prime purpose of Congress in creating this office was to strengthen congressional control over the administration in respect to the collection and disbursement of funds. In that respect the Budget and Accounting Act represents a close analogy to the famous Exchequer and Audit Departments Act, 1866, of Great Britain, which created the office of Comptroller and Auditor General and for the first time provided for the audit of public accounts by an officer directly responsible to Parliament.¹ The system that existed prior to the creation of the General Accounting Office was unsatisfactory to Congress, not merely because the auditing officers were officers of the

¹ For an account of the history and workings of the British audit system, see W. F. Willoughby, W. W. Willoughby, S. M. Lindsay, *The System of Financial Administration of Great Britain* (1917). Institute for Government Research, Studies in Administration.

executive branch, but also because the scope of their powers and duties was inadequate. These officers did little more than effect what is sometimes called a paper audit. Their work was narrowly restricted to seeing that all legal provisions regarding the expenditure of funds were observed. They did not consider it a part of their duties to bring to the attention of Congress unwise expenditures of money or inefficiency in the handling of the financial affairs of the government. The fact that they were officers of the administration made it difficult for them to criticize the administration, even if they should deem it a part of their duties to do so. Their annual reports were of the most perfunctory character and contained little or nothing in the way of suggestions to Congress as to how conditions of administration might be improved except as concerned their own offices.

In the Bureau of the Budget the President was given an agency of general administration through which he might exercise a supervision and control over the administrative agencies constituting parts of the machine of which he was the head. Congress desired a similar agency through which it might better perform its duties as a board of directors of the government corporation. In setting up the General Accounting Office as an agency independent of the executive departments and directly responsible to it, Congress at the same time greatly broadened the powers and duties of that office from the standpoint of having it act as the advisor and aid to Congress in the handling of administrative affairs. While conferring upon this office all the powers and duties formerly possessed by the Comptroller of the Treasury and the six Auditors of the Treasury for the Departments, it added those of determining and bringing

to the attention of Congress all cases of mismanagement, waste, or inefficiency in the handling of financial matters by administrative officers, of recommending action for the improvement of unsatisfactory conditions and in other ways acting as an aid and advisor to Congress in the performance of its duties of seeing that proper provision was made for the efficient conduct of public affairs. These added duties are set forth in Sections 312 and 313 of the act, which read as follows:

Sec. 312. (a) The Comptroller General shall investigate, at the seat of government or elsewhere, all matters relating to the receipt, disbursement, and application of public funds, and shall make to the President when requested by him, and to Congress at the beginning of each regular session, a report in writing of the work of the General Accounting Office, containing recommendations concerning the legislation he may deem necessary to facilitate the prompt and accurate rendition and settlement of accounts and concerning such other matters relating to the receipt, disbursement, and application of public funds as he may think advisable. In such regular report, or in special reports at any time when Congress is in session, he shall make recommendations looking to greater economy or efficiency in public expenditures.

(b) He shall make such investigations and reports as shall be ordered by either House of Congress or by any committee of either House having jurisdiction over revenue, appropriations, or expenditures. The Comptroller General shall also, at the request of any such committee, direct assistants from his office to furnish the committee such aid and information as it may request.

(c) The Comptroller General shall specially report to Congress every expenditure or contract made by any department or establishment in any year in violation of law.

(d) He shall submit to Congress reports upon the adequacy and effectiveness of the administrative exam-

ination of accounts and claims in the respective departments and establishments and upon the adequacy and effectiveness of departmental inspection of the offices and accounts of fiscal officers.

(e) He shall furnish such information relating to expenditures and accounting to the Bureau of the Budget as it may request from time to time.

Sec. 313. All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them; and the Comptroller General, or any of his assistants or employees, when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment. The authority contained in this section shall not be applicable to expenditures made under the provisions of section 291 of the Revised Statutes.

As James W. Good, Chairman of the House Committee that framed the bill, said:

It was the intention of the Committee that the Comptroller General should be something more than a book-keeper or accountant, that he should be a real critic and at all times should come to Congress no matter what the political complexion of Congress or the Executive might be and point out inefficiency if he found that money was being misapplied—which is another term for inefficiency—and that he should bring such facts to the notice of the committees having jurisdiction of appropriations.*

Another member of the Committee, Martin B. Madden, who became Chairman of the House Committee on Appropriations under the new system, described the Comptroller General as the

* *Cong. Record*, May 5, 1921.

instrumentality through which the legislative branch of the government can get information which it has not been able to get heretofore and thus leave the people's representatives to criticize any waste or extravagance of the administration.

Prior to the creation of this office, the only means that Congress had of controlling the administration with a view to satisfying itself that its orders were being honestly and efficiently carried out was by calling for special information through the passage of resolutions of inquiry and through special investigations made from time to time by its regular or special committees. These methods were thoroughly inadequate, unsatisfactory, and expensive, due in large part to the fact that the investigations thus made were occasional and spasmodic. They were frequently of a partisan character and those making them lacked a staff technically competent to bring out and interpret the facts. That the ten committees on expenditure of the departments of the House have failed to perform any important service as a means of control over the administration, is well known. It should furthermore be borne in mind that our political system makes no provision for the device of interpellations, which in states having a responsible form of government is an effective means for inquiring into the conduct of administrative affairs.

In the new General Accounting Office, Congress for the first time has available means through which it can secure information regarding the manner in which particular services are performing their duties, not only as special occasions arise, but currently, and as a matter of routine, exercise a control over the proper conduct of administrative affairs.

CHAPTER III

CONTROL OF TREASURY RECEIPTS AND ISSUES

In the United States as in all governments, provision is made for an officer, known as Treasurer, whose duty it is to receive and have the custody of public funds. This officer is usually nothing more than a custodian of the funds with the duty of seeing that no funds coming into his possession issue therefrom except in pursuance of a proper order. As custodian it is his duty to keep an accurate record of all moneys coming into his possession and all moneys released by him in accordance with orders properly given to him. In respect to the issue of money from the treasury his responsibility is merely that of a paying teller in a bank, that, namely, of honoring requisitions in proper form and emanating from persons having the right to issue such orders. With the purposes for which the money is requisitioned and with its subsequent use and accounting therefor, he has no concern or responsibility.

Though the physical custody of public funds is thus in the hands of an executive officer known as Treasurer, the legal custody of such funds may be said to rest in Congress. This is in virtue of the provision of the Constitution that

No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

This means that no money can be legally withdrawn from the treasury except in pursuance of an order of Congress. In administering this system a formal procedure is required by which moneys collected by government officers shall be formally "covered" into the treasury to the end that a record shall be had of moneys coming into the possession of the Treasurer for the due accounting of which he can be held responsible and a formal method for directing the Treasurer to permit issues from the treasury to be made. The system employed by the United States government is that of ordering moneys to be covered into and to issue from the treasury through the use of what are known as "treasury warrants." Those ordering money to be covered into the treasury are known as "covering warrants" and those ordering money to issue from the treasury are known as "settlement warrants," when the money to issue is in direct settlement of a claim and "accountable warrants" when the issue is to a spending officer who must account for the money thus placed at his disposition.¹

These warrants are all executed and signed by the Secretary of the Treasury, who acts as the requisitioning authority, but they are not valid until countersigned by the Comptroller General. The result is that the Comptroller General is the agent of Congress having the duty of seeing that all moneys that should be deposited with the Treasurer are so deposited and that no money issues from the treasury except in pursuance of law, that is, in pursuance of an appropriation by Congress. He is thus the comptroller of treasury receipts and issues.

¹ There are other classes of treasury warrants as, for example, "transfer warrants," ordering money transferred from one accounting head to another.

This function of controlling treasury receipts and issues is quite distinct from that of settling claims and auditing accounts hereafter described. If all disbursements were made directly from the treasury through settlement warrants, there would be no such distinction. In fact the great bulk of disbursements in the payment of claims is made by so-called disbursing officers within the several services, who obtain their funds through accountable warrants and must account for the disbursement of the funds so placed at their disposition. The distinction between the controlling of treasury receipts and issues and the audit of accounts is brought out in the title given to the British officer occupying the position analogous to that of Comptroller General of the United States, his full title being "Comptroller and Auditor General."

CHAPTER IV

SETTLEMENT AND ADJUSTMENT OF CLAIMS AGAINST THE GOVERNMENT

The duties of the Comptroller General in respect to the control of treasury receipts and issues, though exceedingly important, are relatively simple. It is far otherwise in respect to his duty of seeing that no improper payment of claims is made either by direct settlement through the issue of settlement warrants or by disbursing officers in disbursing funds placed at their disposal through the issue of accountable warrants. The Budget and Accounting Act, 1921, provides (Sec. 305) that

All claims and demands whatever by the Government of the United States or against it and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office.

This should be read in connection with the section (304) conferring upon the Comptroller General all the powers and duties formerly possessed by the Comptroller of the Treasury and the six Auditors of the Treasury for the Departments, which provides that these duties shall

be vested in and imposed upon the General Accounting Office and be exercised without direction from any other officer. The balances certified by the Comptroller General

shall be final and conclusive upon the executive branch of the Government.

These sections mean that all claims of every kind, whether for the payment of personal services by government employees, the purchase of supplies, the payment to private contractors, or what not, shall be settled by the General Accounting Office, and that this settlement "shall be final and conclusive upon the executive branch of the Government."

Originally it was contemplated that all claims calling for the payment of money, no matter where originating or what service affecting, would be presented directly to the accounting officers in the treasury and be settled by them and ordered paid by the treasury through the issue of the proper settlement warrant. This soon broke down. The system accordingly developed by which provision was made for officers in the several services of the government, known as "disbursing officers," to whom money was advanced through the issue of accountable warrants, as has been described, with which they could make payment of the claims arising in the services with which they were connected. The payments thus made do not, however, constitute a final settlement and adjustment of the claims giving rise to such payments. All must be reported to the General Accounting Office through the rendition of periodic "accounts current," which set forth the moneys received through accountable warrants and the payments made, there being attached to such accounts current the vouchers evidencing and justifying the payments. It thereupon becomes the duty of the General Accounting Office to examine such accounts current and the supporting vouchers attached for the purpose of

satisfying itself that the payments were in accordance with law, were correct in amount, and that all legal provisions governing the matter had been complied with. If satisfied as to the correctness of the payments the corresponding claims will be declared settled and adjusted. When not satisfied the credits for the payments are first "suspended" and the disbursing officer is called upon to justify his action in making them. If he cannot do this to the satisfaction of the General Accounting Office, the payment is "disallowed" with the result that the disbursing officer is not given credit for such payments and is out of pocket to that amount unless he can (as he is able to do in most cases) secure reimbursement from the person to whom the money was paid or is subsequently relieved from liability by Congress through the passage of what is known as a relief act. When the money has been paid in good faith and the government has suffered no material loss, such relief by Congress can usually be secured.

It will be seen that under this system all payments made by disbursing officers are made at their own risk except when, as will shortly be pointed out, advance advice from the General Accounting Office has been secured; that the payments by the disbursing officers are only presumptive evidence of the settlement of the claims and are provisional in character, since they may be disallowed by the General Accounting Office. No claim thus is finally "settled and adjusted" until acted upon by the General Accounting Office.

It seemed but reasonable, under a system such as this, that the disbursing officers, when they had doubt regarding the propriety of making payment, should have the right to request the decision of the accounting officers

regarding the matter. Such a practice accordingly developed and was expressly authorized by a provision in the Dockery Act of July 31, 1894, which effected a thorough reorganization of the accounting or audit system of the government, which is still in force, and reads (Sec. 8) as follows.¹

Disbursing officers, or the head of any Executive Department, or other establishment not under any of the Executive Departments, may apply for and the Comptroller of the Treasury [now the Comptroller General] shall render his decision upon any question involving a payment to be made by them or under them, which decision, when rendered, shall govern the Auditor and the Comptroller of the Treasury in passing upon the account containing said disbursement.

This function of the Comptroller General, to render decisions construing the law regarding the propriety of payments, has become an exceedingly important one. It represents, however, no essential change with regard to the function of that office in respect to the settlement and adjustment of all claims. It merely means that the determination of the law governing this settlement and adjustment is made prior to payment instead of subsequently.

Though the great bulk of payment of claims is now made through disbursing officers, it is still possible for claims under certain circumstances to be settled and adjusted directly by the General Accounting Office. Formerly, when this was done, payment of the adjusted claim was made by the issue of a settlement warrant, with the result that the payment was made by the Treasurer of the United States. This procedure can still be followed, but a provision of the Budget and Accounting

¹ 28 Stat. L., 162, 208.

Act, 1921, authorized the Comptroller General to provide for the payment of claims directly settled by him by the proper disbursing officer. This procedure is preferable, since all disbursements under this system will appear in the accounts of the disbursing officer instead of partly in the accounts of such officer and partly in the accounts of the Treasurer of the United States.

This function of the General Accounting Office, to settle and adjust all claims, is commonly referred to as its function of auditing disbursements. This is so only in a very restricted or qualified sense. Though the work done by the General Accounting Office in examining and passing upon the accounts of disbursements by the disbursing officers is of the same character as that of conducting an audit, the purpose of the examination and the results that may follow from its findings are quite different. The function of settling and adjusting claims is one thing, that of determining whether the settlements when made were properly made and in accordance with all legal requirements is quite another. Only the latter operation can be strictly spoken of as an audit. To state this in another way, an audit has nothing to do with the operation of determining in the first instance whether a claim should be paid: its purpose is merely to determine by a subsequent examination whether the settlements arrived at were proper, and, if it finds that settlements were improperly made, to call attention to that fact in the report of its findings. With such report its responsibilities end. It may be said that the description here given of an audit applies only to what is known as a "post-audit" system and that the system of examination of accounts of the General Accounting Office is that of what is known as a "pre-audit." This, however, is not so. The

operation of liquidating obligations involves three distinct operations: (1) the settlement and adjustment of the claims representing the obligations; (2) the payment of the claims as thus determined to be just and due; and (3) the audit of the accounts recording these transactions for the purpose of determining, by means of an independent examination, whether the action taken was correct and proper. A "post-audit" system is one where the audit is made subsequent to the second operation; that is, the payment of money in satisfaction of the claim. A "pre-audit" system is one where the audit is made after the first operation, that is after the settlement and adjustment of the claims, but before their payment. In neither case does the audit involve the exercise of authority in the way of authorizing the settlement and adjustment of claims in the first instance. It will be seen from this description of the nature of an audit that the function of the General Accounting Office to settle and adjust all claims against the government is quite distinct from that of an audit, except as it may be said that this office in performing this function *ipso facto* audits the accounts, that the system is one where the first and third of the three operations involved in liquidating obligations are performed at the same time and by one operation.

Under certain circumstances the distinctions that have been made might be deemed to be of little importance. This is not so, however, in the system under consideration. This arises from the fact that the office having the function of settling and adjusting claims is not a part of the particular services in connection with whose operations the claims arise and is not even a part of the administrative branch. A situation is thus presented where all claims arising in the executive branch of the

government are finally settled and adjusted by an agency of the legislative branch. Few, it is believed, will question the desirability that the agency having the audit of disbursements should be independent of the organization responsible for making such disbursements. There are many, however, who maintain that the settlement and adjustment of claims is a purely executive function and should be performed by those executive officers who are responsible for the incurring of the obligation, checked and controlled as may be needed by some other superior administrative authority. This, they maintain, is not only in accordance with correct theories regarding the separation of powers but it also conforms to the requirements of efficient administration and represents the practice in all private undertakings. If persons holding to this opinion could have their way, there would be a complete divorce between the operations of settling, adjusting, and paying claims on the one hand and the audit of these operations on the other. The first would be performed by officers of the administrative branch and the latter by the General Accounting Office as the representative of Congress which granted the funds and set forth the conditions to be observed in their expenditure.

It is impossible to deny the force of the contention that has just been set forth. At the same time it must be recognized that an equally strong, if not stronger, case can be made out for the maintenance of the existing system.

From the standpoint of the separation of powers, it must be borne in mind that the separation of powers set up in the Constitution was that between the legislative, the judicial, and the executive powers, and that executive power does not comprehend administrative power. From

the constitutional standpoint, the phrase of the constitution that "the executive power shall be vested in a President of the United States" was intended to mean, and has been so held by courts to comprehend, only those political powers such as the representation of the government in the conduct of foreign relations, the exercise of supreme command of the armed forces, the general duty of seeing that the laws were faithfully executed, and like powers which, it is held, should be exercised by the head of the government according to his own independent judgment and without direction or control in any manner by either the legislative or executive branch of the government. Though the Constitution is silent in respect to the exercise of administrative power except as incidental reference is made to the executive departments, there can be no doubt that it was the intention of the Congress that supreme administrative authority should reside in the legislative and not the executive branch. To quote from a recognized authority on American Constitutional Law:³

In the United States it was undoubtedly intended that the President should be little more than a political chief; that is to say, one whose functions should, in the main, consist in the performance of those political duties which are not subject to judicial control. It is quite clear that it was intended that he should not, except as to these political matters, be the administrative head of the government, with general power of directing and controlling the acts of subordinate federal administrative agents. The acts of Congress establishing the Department of Foreign Affairs (State) and of War, did, indeed, recognize in the President a general power of control,

³ W. W. Willoughby, Constitutional Law of the United States, Students' Edition, 1912, pp. 478-9.

but the first of these departments, it is to be observed, is concerned chiefly with political matters, and the second has to deal with the armed forces which by the constitution are expressly placed under the control of the President as Commander-in-Chief. The act establishing the Treasury Department simply provided that the Secretary should perform those duties which he should be directed to perform, and the language of the act, as well as the debates in Congress at the time of its enactment, show that it was intended that this direction should come from Congress. Furthermore the Secretary is to make his annual reports, not to the President, but to Congress. In similar manner the Post Office Department, when first permanently organized in 1794, was not placed under the control of the President. The act gives in detail the duties of the Postmaster General and there is no suggestion that in the exercise of these duties he is to be under other than congressional direction.

This fact, that, in the national government, Congress is the source of all administrative authority, is excellently brought out in a very able Senate report on a bill having for its purpose to authorize the heads of departments to appear personally and participate on the floor of the two Houses of Congress in debates in which they are interested.* After enumerating the executive powers of the President, as granted to him by the constitution, the report continues:

The departments and their principal officers are in no sense sharers of this power. They are the creatures of the laws of Congress exercising only such powers and performing only such duties as those laws prescribe. . . . The Secretaries were made heads of departments; they were charged by law with certain duties, and invested by law with certain powers to be used by them in the admin-

* 46 Cong. 3 sess., S. rept. 837, February 4, 1881.

istration confided to them by the laws. They were in no sense ministers of the President, his hand, his arm, his irresponsible agent in the execution of his will. There was no relation analogous to that of master and servant, or principal and agent. The President cannot give them dispensation in the performance of duty or relieve them of the penalty of nonperformance. He cannot be impeached for their delinquency; he cannot be made to answer before any tribunal for their inefficiency or malversation in office; public opinion does not hold him to stricter responsibility for their official conduct than that of any officer. They are creatures of law and bound to do the bidding of the law.

This constitutional power of Congress to keep the reins of final administrative control in its own hands rather than in those of the President has been amply sustained by the courts. Thus, in the early case of *United States v. Kendall*⁴ it was decreed by a federal court with reference to the Post Office:

The legislature may prescribe the duties of the office at the time of its creation, or from time to time as circumstances may require. If those duties are absolute and specific, and not by law made subject to the control or direction of any superior officer, they must be performed, whether forbidden or not by any other officer. If there be no other officer, who is by law specially authorized to direct how the duties are to be performed, the officer whose duties are thus prescribed by law is bound to execute them according to his own judgment. That judgment cannot lawfully be controlled by any other person. . . . As the head of an executive department he (the Postmaster General) is bound, when required by the President, to give his opinion in writing upon any subject relating to the duties of his office. The President in the execution of his duty to see that the laws be faithfully

⁴5 Cranch, O. C. 163.

executed is bound to see that the Postmaster General discharges "faithfully" the duties assigned to him by law; but this does not authorize the President to direct how he shall discharge them.

And in *Kendall v. United States*^{*} the Supreme Court of the United States in affirming this decision of the Circuit Court, said:

The executive power is vested in a President, and as far as his powers are derived from the constitution, he is beyond the reach of any other department, except in the mode prescribed by the constitution through the impeaching power. But it by no means follows that every officer in every branch of that department is under the exclusive direction of the President. Such a principle, we apprehend, is not, certainly cannot, be claimed by the President. There are certain political duties imposed upon many officers in the executive departments, the discharge of which is under the direction of the President. But it would be an alarming doctrine that Congress cannot impose upon any executive officer any duty they may think proper, which is not repugnant to any rights secured and protected by the constitution, and, in such cases, the duty and responsibility grow out of and are subject to the control of the law and not to the direction of the President. And this is emphatically the case where the duty enjoined is of a mere ministerial character.

The constitutional doctrine thus early declared as to the relation of the Congress to the administrative services which it establishes, and of those services to the President, has not been disturbed and fixes to-day the legal status of the administrative departments.[†]

^{*} 12 Peters 524.

[†] For a consideration of this question, see F. J. Goodnow, *The Principles of Administrative Law in the United States*, p. 79.

These opinions of the courts, supported by the other authorities that have been quoted, are of importance from the standpoint of the present study, since they show two things: first, that, under our political system a clear distinction is made between executive and administrative powers; and second, that, while the executive power is vested in the President, the administrative power is vested in Congress. In principle and in fact Congress acts as the board of directors of the government corporation. It is the body which determines what administrative activities shall be engaged in, what instrumentalities shall be set up for the performance of such activities, what rules of procedure or conditions shall govern the administrative services in performing their duties, what funds shall be placed at their disposition for meeting their necessary expenses, and under what conditions these funds shall be expended and accounted for. In all this the relations between Congress and the administrative services are direct except as it may desire to treat the President as one of its administrative agencies. Were these powers and duties executive, they would have to be exercised by the President. That they are exercised by Congress and not by the President, shows that they are not executive but administrative.

It follows logically from the foregoing that the contention that the settlement and adjustment of claims represents the exercise of an executive power and that the agency having the duty of making the settlement and adjustment of claims should, therefore, be an executive agency is unsound, and is made only because those holding to this contention have failed to observe the distinction between executive and administrative powers and to recognize that the source of administrative power is

the Congress. This being so, it is well within the constitutional power of Congress to provide as it has done that all claims shall be settled and adjusted by an agency independent of the executive branch and directly responsible to it.

It is one thing to hold that Congress has acted within its authority in providing for the settlement and adjustment of claims by a legislative agency independent of the executive departments and directly responsible to it, and quite another thing to hold that the adoption of this policy is a wise one from the standpoint of efficient administration. Those who are opposed to this policy, even if they have to admit that the action of Congress is constitutional, will nevertheless maintain that this policy is not in the interest of good administration. They see an evil in a system where the services having responsibility for the administration of the law and to that end of contracting obligations shall not have the responsibility for the settling of those obligations.

In considering this practical aspect of the problem it is necessary to distinguish between the two grades of administrative authority and responsibility; that which is immediate and that which is ultimate or final. At best the administrative services are but agencies of Congress. The authority they exercise is delegated authority. In creating them and in granting to them certain powers, Congress does not divest itself of responsibility for the manner in which these duties are performed. While immediate responsibility rests with the administrative services, ultimate or final responsibility rests with Congress. On behalf of the present system it may be said that there is an element of danger in permitting the service that incurred an obligation to pass upon its own

acts in the settlement and adjustment of such obligations, that far greater care will be exercised by those having responsibility for the incurring of obligations if they know that the manner in which they exercise this responsibility will be subjected to the control of an independent agency acting for their superior, Congress. Certainly this has been the position of Congress since the first establishment of the financial system of the government. It has always been the system that the settlement and adjustment of claims should be made by an agency independent of the spending services. In the creation of the General Accounting Office, Congress has not changed this. It has merely provided that such independent agency, instead of being located in the Treasury Department and thus subject to influence by the President through his power of dismissal of the officers at its head, should be independent of the executive and directly responsible to it. There has always been control by an officer independent of the spending services. The change made was only intended to make this control more effective by giving greater independence to the officers responsible for exercising it.

In point of fact there has never been, and is not now, serious objection to the working of this system in so far as the settlement and adjustment of individual claims is concerned. The main objection to this system is one which has arisen since the creation of the General Accounting Office, and has to do, not with the settlement and adjustment of claims by an independent agency as a principle but with the scope of the authority of the General Accounting Office in making such settlements and adjustments. This is a question to which attention will now be given.

CHAPTER V

SCOPE OF AUTHORITY OF THE COMPTROLLER GENERAL IN THE SETTLEMENT AND ADJUSTMENT OF CLAIMS AGAINST THE GOVERNMENT

It has been pointed out that the law in broad terms provides that "all claims and demands of the government of the United States, or against it, and all accounts whatever in which the government of the United States is concerned either as debtor or creditor shall be settled and adjusted in the General Accounting Office"; that the powers and duties vested in the Comptroller General shall "be exercised without direction from any other officer"; that "the balances certified by the Comptroller General shall be final and conclusive upon the executive branch of the government"; and that, upon the request of any disbursing officer or head of a department or independent establishment, the Comptroller General "shall render his decision upon any question involving a payment to be made by them or under them, which decision, when rendered shall govern the Auditor and the Comptroller of the Treasury [now the Comptroller General] in passing upon the account containing said disbursement."

Though the general intent of these provisions is clear; namely, that the final settlement of all claims and the passing upon all accounts shall be vested in the Comptroller General, who, in acting shall be guided by his own

best judgment, and that his action shall be conclusive upon the executive branch, the application of these provisions in practice gives rise to numerous opportunities for differences of opinion in respect to the scope of the powers of the Comptroller General.

Provisions of permanent statute law impose on the heads of departments and independent establishments the performance of certain duties and vest in them, in many cases, large discretionary power in respect to the framing of rules and regulations having for their purpose to put these laws into effect and in taking action upon specific cases arising under these laws and regulations. With rare exceptions money is required and is voted for the support of the services intrusted with the administration of the law and the performance of the work authorized or directed. The action taken by the heads of the departments and the independent establishments in the framing of these rules and regulations and in acting upon specific cases determines in many instances the circumstances under which claims for payments by the government will arise and the amounts of payments that shall be made. In not a few cases there may be a question whether the heads of the departments or the independent establishments have properly interpreted the statute, whether the rules and regulations issued by them are in conformity with the law or the action taken by them in specific cases is in conformity with the law or the rules and regulations framed for putting such law into effect.

There can be no doubt that in cases such as these it is the duty of the executive officer in the first place to construe the law and determine his powers and duties under it, and, if he has doubt in respect to the matter to secure

the opinion of the Attorney General. Having done this, the question is then presented as to whether this decision, whether supported or not by an opinion of the Attorney General, is binding upon the Comptroller General in settling accounts arising under the administration of the law, or whether his duty of seeing that no payment of money is made except in strict conformity with law requires that he shall determine for himself whether the action of the executive officer which had as its result to give rise to claims for the payment of money, was correct.

It is manifest that two positions can be taken in respect to this matter. The one is that the determination of the law is the duty of the officer having the administration of the law, assisted, if need be, by the advice of the Attorney General, and that the duty of the Comptroller General is restricted to seeing that no improper payments are made in administering the law as so construed. The other is that the Comptroller General, in the performance of his duty of protecting the treasury and seeing that no payments not authorized by law are made, must himself construe the law and that if he believes that a payment is not justified by the law as so interpreted by him that it is his duty to prevent such payment being made and if made that reimbursement of the payment is enforced.

Strong arguments can be adduced in support of both of these positions.

In support of the first the claim can be made that it is the intent of Congress, and in conformity with correct principles of public administration, that responsibility for the application of law should reside with the administrative officer charged with its enforcement, that to sanction the right of the Comptroller General to review and

reverse administrative action would mean that, in many matters of great importance, that officer and not the head of the department or establishment would exercise supreme administrative authority.

In support of the second, it may be urged that the whole purpose of providing for an independent audit of accounts and the determination by such independent agency of what claims shall be paid, is that of providing for a check upon administrative officers; that the actual payment of a particular claim is of secondary importance to that of determining the validity of the administrative action which gave rise to such claim; that if the Comptroller General is estopped from considering the validity of such action the door is thrown open to an abuse or unwise exercise of administrative authority that will entail illegitimate demands upon the treasury that may amount to many thousands or even millions of dollars.

In general it may be said that administrative officers adhere to the first position and that in such adherence they have had to a large extent the support of the Attorney General, and that the Comptroller General adheres to the second in which he has had up to the present time the general support of Congress. The result is that there is a sharp cleavage within the government in respect to this most important matter, and numerous cases have arisen growing out of this difference of position that have seriously interfered with the due conduct of public affairs.

In further explanation of this difference of position, it should be pointed out that the administrative services, or at least certain of them, take the position that, even if it be admitted that the Comptroller General has the right to question the interpretation placed by them upon

the law for the administration of which they are responsible, if the matter in dispute is referred to and passed upon by the Attorney General of the United States it then becomes the duty, if not the legal obligation, of all officers of the government to follow the opinion of the Attorney General as so rendered. The issue in its final form thus becomes one as to whether the opinion of the Attorney General or that of the Comptroller General should govern where the construction of the law as affecting the validity of a class of claims is involved.

This question as to whether the Comptroller General should, as a matter of practice if not of law, be guided by the opinions of the Attorney General in construing the law relating to the operation of the executive departments and establishments is one that has always existed, though as will be shortly shown it has become more acute since the creation in 1921 of the independent General Accounting Office.

Prior to the enactment of Section 8 of the Dockery Act of July 31, 1894, that has been reproduced above, questions involving the use of appropriated moneys were frequently submitted to the Attorney General. It was then the Comptroller's sole function to act and decide, while the Attorney General was the legal advisor of the government.¹ At the same time the practice grew up of seeking in advance, advice from the Comptrollers upon matters which were likely to come before them for decision in the settlement of accounts. These two functions, which prior to 1894 were legally distinct and committed to different hands, became in practice to a large extent confused and gave rise to the differences that have been

¹ See 11 Op. Atty. Gen. 5, refusing an opinion on a matter to be decided by the Auditor. Compare 20 Op. 655.

mentioned. With the enactment of Section 8 of the Dockery Act, expressly authorizing the Comptroller to give advance opinions and providing that such opinions should govern in the settlement of accounts, the Comptrollers have tended to take a stronger position in respect to the principle that the opinions of the Comptroller should be the determining decisions, regardless of whether they conformed to the opinions of the Attorney General or not. And this position was still further emphasized following the enactment of the Budget and Accounting Act, 1921, which took the accounting office from under the Treasury Department and vested all their powers in an independent General Accounting Office.

This issue, as has been said, has given rise to a number of disputes which have seriously interfered with the due conduct of public affairs. An account of some of the more important of these disputes, with a statement of the position taken upon them by the Comptroller General and the Attorney General, will serve to convey a better idea of the nature and importance of the issue than can be obtained from any general statement.

On September 7, 1916, Congress passed what is known as the Employees Compensation Act³⁹ providing for the compensation of federal employees receiving "personal injuries" while in the performance of their duties and entrusted the administration of this act to a body known as the Employees Compensation Commission. The question arose as to whether this act covered "occupational diseases" as well as personal injuries resulting from accidents strictly speaking. The Commission, through the President, requested the opinion of the Attorney

³⁹ Stat. L., 742.

General on this matter. The latter in 'an opinion,'³ comprehensively reviewing the history of employees' compensation, and the federal law applicable thereto, held that the interpretation of the act by the Commission that occupational diseases were included under the act was correct. This opinion of the Attorney General the Comptroller General refused to follow. In his opinion,⁴ the Comptroller stated his position in regard to the weight to be given to the opinion of the Attorney General in the following words:

The opinion of the Attorney General as to the matter regarding which he may with propriety express opinion is entitled to most respectful consideration and great weight, but such opinion is advisory only and lacks the force of a judicial determination . . . Congress . . . is . . . the only authority to which there lies an appeal from this office. I am always pleased to consider most carefully the views of any interested branch of the government in connection with any matter before me in support of a proper request for reconsideration of action taken but I may not accept the opinion of any official, inclusive of the Attorney General, as controlling my duty under the law.

To relieve the situation thus brought about, Congress was appealed to, and on June 5, 1924, it passed an act⁵ amending the Employees Compensation Act and providing definitely that "the term 'injury' includes, in addition to injury by accident, any disease proximately caused by the employment," and also providing that

³ 33 Op. Atty. Gen. 476.

⁴ 2 Op. Comp. Gen. 784.

⁵ 43 Stat. L., 389.

in the absence of fraud or mistake in mathematical calculation, the findings of facts in, and the decision of the Commission upon, the merits of any claim presented under or authorized by this act, if supported by competent evidence shall not be subject to review by any other administrative or accounting officer, employee or agent of the United States.

This action by Congress has been interpreted by many as a defeat of the General Accounting Office and an indication by Congress that the Comptroller General was in error in taking the position that he did. This, of course, is not so. The passage of the amending act did not mean that the Comptroller General exceeded his authority in refusing to follow the opinion of the Attorney General or was wrong in the interpretation that he placed upon the law. It merely means that, on having the matter brought to its attention, it desired to remove an ambiguity in the act as first passed and to give to such act a broader construction. It is significant, however, that it was the opinion of Congress, in this case, that the findings of fact, in the absence of fraud or error in mathematical calculations, as arrived at by the Commission should be final and not subject to review by the General Accounting Office.

In another case, which likewise involved the Employees Compensation Commission, the Comptroller General, in an opinion rendered October 29, 1925,^{*} held, in contravention of the position taken by the Compensation Commission, that the authority in the Employees Compensation Act to furnish reasonable medical, surgical and hospital services and supplies is confined to services and supplies ordinarily furnished by physicians or hos-

^{*} 5 Op. Comp. Gen. 301.

pitals, such as medicines and surgical dressings, and does not include artificial eyes, arms, or other prosthetic appliances. Thereupon, the Commission requested an opinion on the matter from the Attorney General and received one sustaining its position.¹ The Commission then referred this opinion to the Comptroller General with the request that in view of this opinion the Comptroller General reconsider his action upon the matter. This the Comptroller General, in an opinion rendered March 5, 1925, refused to do. In this opinion the Comptroller General again took advantage of the opportunity to state his position in regard to the obligation that he was under to follow the opinions of the Attorney General. He said²

The question of the jurisdiction of your Commission to determine questions as to the extent and application of the Federal Employees Compensation Act was fully considered in my decisions of July 5, 1922, September 23, 1922, January 29, 1923, May 29, 1923, February 11, 1924, and February 26, 1924, 3 Comp. Gen. 545. Your attention is particularly invited to the following quotation from the decision last cited:

“The accounting officers have consistently recognized the finality of the findings and decisions of the Commission upon matters within its jurisdiction, but the jurisdiction or authority of the Commission is prescribed and limited by the Act of September 7, 1916 *supra*, and it is the duty and responsibility of the accounting officers to see that the appropriations made by the Congress to carry out the provisions of said act are disbursed and accounted for in accordance with the laws relating thereto. Neither the Act of September 7, 1916, nor any appropriation made in pursuance thereof authorizes the

¹ 35 Op. Atty. Gen. 36.

² 5 Op. Comp. Gen. 688.

Employees Compensation Commission to expend Government money in its discretion and for such purposes as it may see fit. On the contrary, the Congress has specifically prescribed the objects and purposes for which the funds appropriated by it may be expended."

Since the above cited decisions were rendered there has been inserted by the amendment of June 5, 1924, 43 Stat. L., 389, the following language:

"In the absence of fraud or mistake in mathematical calculation, the finding of facts in, and the decision of the Commission upon, the merits of any claim presented under or authorized by this act, if supported by competent evidence, shall not be subject to review by any other administrative or accounting officer, employee or agent of the United States."

This language does not extend the application of the act or authorize the furnishing of any services or supplies not otherwise authorized in the original act as amended. The matter here under consideration does not involve any finding of facts or the merit of any claims authorized under the employees compensation act. It involves only a determination as to the availability of an appropriation for a certain class of expenditures, and in so far as the executive branch of the government is concerned, there can be no doubt that the law has made the decision of this office on such matters final and conclusive.

Careful consideration has been given the opinion of the Attorney General, referred to in your letter, *supra*, but I find therein nothing to require or justify any change in the former decision of this office on the question involved.

Whatever may have been the effect of opinions of the Attorney General on questions relating solely to the legality of proposed expenditures of appropriated moneys, prior to the enactment of the Dockery Act of July 31, 1894, 28 Stat. L., 205, the evident purpose and effect of said statute was to vest in the comptroller the exclusive jurisdiction and plenary authority to determine such questions. This is clearly indicated by the report

of the joint committee which drafted the provisions of said act. See report as printed in House Report No. 637, 53d Congress, second session, in which it is stated that the duties of the comptroller will be "mainly to determine finally the construction of statutes," and that the act "will concentrate in one head all the legal direction in the settlement of accounts." In this connection attention is invited to the opinion of Attorney General Richard Olney, rendered May 22, 1895, 21 Op. Atty. Gen. 178, in which he declined to render an opinion on certain questions involving the legality of expenditures from appropriated moneys, referring to the fact that while such questions "prior to October 1, 1894 (effective date of the Dockery Act), could properly be asked of the Attorney General," they could now be submitted to the comptroller under the provisions of said act and that they "are questions which the comptroller, by his greater experience, is better qualified to pass upon, and it is desirable to avoid any possible conflict of precedents." This opinion was quoted from and followed by Attorney General Judson Harmon in an opinion of August 31, 1896, 21 Op. Atty. Gen. 405, in which he refused to express an opinion on the question there presented, stating:

"This is a question which may be asked of the Comptroller of the Treasury. (Act of July 31, 1894, chap. 174, sec. 8.) It belongs to a class of questions which require for their decision a special knowledge of our appropriation acts and the course of decisions thereunder. . . ."

See also opinion of Attorney General Joseph McKenna, rendered May 6, 1897, 21 Op. Atty. Gen. 531, in which he said:

. . . "It has been repeatedly held by Attorneys-General that on questions of disbursement of money or payment of claims, so by law relegated to the comptroller, the Attorney-General should not render opinions, . . ."

To the same effect is an opinion of August 10, 1922, 33 Op. Atty. Gen. 268, which concludes as follows:

“Section 8 of the Dockery Act of July 31, 1894 (ch. 174, 28 Stat. 207), provided that the balances certified by the auditors of the Treasury, or upon revision by the Comptroller of the Treasury, should be final and conclusive upon the executive branch of the Government, and that where disbursing officers, or the head of any executive department, applied to the Comptroller of the Treasury for his decision upon any question involving a payment, the decision, when rendered should govern the case. Construing these provisions of law, my predecessors have uniformly held that a question of pay for the determination of the comptroller cannot be submitted to the Attorney General for his opinion merely because it may incidentally involve some power or the effect of some power claimed to exist in the head of a department. (See, for example, 25 Op. 301, 28 Op. 129.) The same rule necessarily applies to the Comptroller General, in whom is vested all the power formerly conferred by law upon the Comptroller of the Treasury. (Act of June 10, 1921, ch. 18, sec. 304, 42 Stat. 20, 24.)

“I have the honor, therefore, to advise you that I do not deem it proper to express my opinion upon the question submitted by you.”

Upon reconsideration my decision of October 29, 1925, must be and is affirmed.

Another difference arising between the General Accounting Office and the administrative services had to do not with the settlement of specific claims or the construing of the law under which claims arose, but with the authority of the General Accounting Office to issue regulations binding upon the disbursing officers of the departments in respect to the manner in which certain classes of claims should be handled.

On November 25, 1922, the General Accounting Office issued its General Regulation No. 13, providing that, on and after January 1, 1923, all government transportation

accounts, instead of being paid by the disbursing officers of the departments should, after administrative examination by them be submitted to the General Accounting Office for its examination, final settlement, and payment. In explanation of the issue of these regulations, the Comptroller General in his annual report for 1923 said: *

Under the authority to settle all claims, demands, and accounts of and against the United States and to prevent the continuation of the practice of disbursing officers making overpayments to common carriers amounting to vast sums because of lack of facilities and authority to ascertain and determine the correct classification, rates, etc., for transportation services rendered the Government, it was directed, effective January 1, 1923, that all claims and demands of common carriers against the United States, payable within the continental limits of the United States, should be forwarded to this office, after required administrative examination, for direct settlement and payment by means of Treasury warrant and check, in accordance with long-existing procedure prevailing in adjusting similar claimed obligations of the Government, doubtful as to fact or law, or valid obligations where the disbursing officers are without means to accurately determine the amount due and payable. While not so required, with a view to obtaining complete cooperation, the matter was presented to all concerned a year previous to the promulgation thereof and favorable response was received from each, except the Navy Department, which did not indicate its position until after action had been taken. All the responding departments indicated the ineffectiveness of their examinations and pointed out that the proposed plan was being followed to a large extent. It was admitted by the War Department that it had abandoned the hopeless task of determining the correct amounts and was relying on the General Accounting Office to make proper adjustments in future

* Pp. 4-5.

accounts, and it was known that a similar condition existed in the Navy Department.

Adverting again to the practical advantages of having all transportation accounts settled directly in the General Accounting Office, the Comptroller General in his succeeding annual report, that for 1924, said: "

When payment is made by a disbursing officer and an overpayment is found in the audit of the account, the clerical work alone required to secure the refundment is out of all proportion to the modest demands of efficiency and is dead expense. The work involves a suspension in the disbursing officer's account, to be included in a statement of differences. The matter is then taken up by the disbursing officer with the carrier and if acquiesced in by the carrier, a refundment is made to the disbursing officer, who thereupon deposits the amount in the United States Treasury by a certificate of deposit. Then follows the necessary office recording and corresponding entries in the Treasury Department, with final action by the General Accounting Office removing the suspension. In case the carrier disputed the position taken by the General Accounting Office and this office adheres to its position, further correspondence is conducted with the carrier. All such clerical work is eliminated where settlements are made by the General Accounting Office directly as the transaction is between this office and the carrier, with no bookkeeping transactions in the disbursing officer's account.

Notwithstanding the foregoing, the War Department, upon the receipt of the regulations, contested the authority of the General Accounting Office to issue them and sought an opinion of the Attorney General on the matter. This the Attorney General gave completely sustaining

¹⁰ P. 20.

the position of the Department. As this opinion gives an exceptionally careful consideration of the powers of the General Accounting Office and of the status and duties of disbursing officers from the standpoint of the administration, it is desirable to reproduce it in full. It reads: "

DEPARTMENT OF JUSTICE

WASHINGTON, December 28, 1922.

The Honorable, The Secretary of War.

SIR: This will acknowledge receipt of your letter of the 9th instant asking my opinion as to the legality as applied to the War Department of General Accounting Office, General Regulations No. 13, dated November 25, 1922, which was forwarded to you in a letter of transmittal dated December 4, 1922.

General Regulations No. 13 proposes to revolutionize the system of paying and auditing government transportation accounts. At the present time such accounts, just as other government obligations, are paid by the disbursing officers of the several departments. Payment is made only after the administrative officer in charge has by careful examination satisfied himself as to the correctness of the claim presented and certified the same to the disbursing officer for payment. The accounts of payments made by disbursing officers are forwarded to the department involved for administrative examination there, and after they have been thus examined they are finally passed upon and audited by the General Accounting Office.

General Regulations No. 13, which by its terms is to go into effect on January 1, 1923, provides that the claims of carriers should be presented as theretofore to the department involved, but that departmental action thereon should be limited to—"certification as to the services performed; that the services were properly

" 33 Op. Atty. Gen. 383.

authorized, and necessary in the public service; and that the amount thereof has not been paid and is payable from the appropriation designated." After such certification, the Department is to forward the bills promptly to the General Accounting Office for audit and payment by it.

The proposed order will not only eliminate all payment of transportation accounts by disbursing officers, but it will also largely eliminate the administrative examination of such accounts which is now made prior to or after payment. The proposed order will substitute a single audit for the present system of double audit, and the one audit which is made will take place in the same office which finally determines the rights of the United States in respect to the payment made.

I am first called upon to consider whether or not I may properly render any opinion upon the question here submitted.

Section 301 of the Budget and Accounting Act of June 10, 1921 (42 Stat. 23), provides:

"There is created an establishment of the government to be known as the General Accounting Office, which shall be independent of the executive departments and under the control and direction of the Comptroller General of the United States."

Section 304 of this Act reads in part as follows:

"All powers and duties now conferred or imposed by law upon the Comptroller of the Treasury or the six auditors of the Treasury Department . . . shall, so far as not inconsistent with this Act, be vested in and imposed upon the General Accounting Office and be exercised without the direction of any other officer."

The above provisions declare the complete independence of the General Accounting Office. Such independence necessarily exists, however, only with respect to the power and duties which the statute gives to the General Accounting Office. Notwithstanding the independent position of that office any order which extends beyond the authority given it by Congress is void. Therefore, any order given by the General Accounting Office

to the executive departments affecting the performance by them of executive functions independently confided to them necessarily involves a question of law which may be submitted to the Attorney General for his opinion.

My predecessors have frequently said that they would not review a question involving disbursements which had been passed upon by the Comptroller of the Treasury. The final authority of the Comptroller upon such an issue was based upon the provisions of Section 8 of the Dockery Act of July 31, 1894 (28 Stat. 209).

“Disbursing officers, or the head of any Executive Department, or other establishment not under any of the Executive Departments, may apply for and the Comptroller of the Treasury shall render his decision upon any question involving a payment to be made by them or under them which decision, when rendered, shall govern the Auditor and the Comptroller of the Treasury in passing upon the account containing said disbursement.”

This section makes the ruling of the Comptroller of the Treasury (now the Comptroller General) conclusive as to particular payments to be made by and through executive departments. The present question does not involve a ruling upon particular payments to be made by and through an executive department, but it involves the duty of the executive departments to obey an order entirely prohibiting them from making payments of a general class which they are now authorized by law to make. I find nothing in section 8 of the Dockery Act, or in the Budget and Accounting Act of 1921, which deprives the head of an executive department of the right to have the opinion of the Attorney General upon such a question.

The authority of the General Accounting Office as established by the Act of June 10, 1921 must be construed in the light of the prevailing practice of making payment for departmental expenditures through departmental disbursing officers. That this practice has received legis-

lative sanction is shown by the numerous statutes defining the duties and functions of disbursing officers.

Section 176, R. S., regulates the appointment of disbursing clerks and states that they are "authorized by law in the several departments." Sections 3620 and 3621, R. S., regulate the manner in which disbursing officers shall deposit public money entrusted to them for disbursement. Sections 3622 and 3623, R. S., regulate the accounts which disbursing officers must render. Section 3648, R. S., authorizes advances to disbursing officers for the purpose of making payments in fulfillment of public engagements. Section 3633, R. S., provides for suit against disbursing officers who have not properly accounted for public money entrusted to them. Section 3651, R. S., regulates the medium of payment to be used by disbursing officers.

In addition to the foregoing statutes dealing with the duties and functions of disbursing officers in general, there are numerous others relating solely to disbursing officers of the army.

The Act of April 20, 1874 (18 Stat. 33) provides:

"It shall be the duty of the Secretary of War to cause frequent inquiries to be made as to the necessity, economy, and propriety of all disbursements made by disbursing officers of the Army, and as to their strict conformity to the law appropriating the money."

The Act of July 5, 1884 (23 Stat. 113), provides:

"Hereafter all officers, agents, or other person receiving public moneys appropriated by this or any subsequent Army appropriation act shall account for the disbursement thereof according to the several and distinct items of appropriation expressed in such act."

The Act of March 2, 1905 (33 Stat. 832), provides:

"Hereafter all the accounts of individual paymasters shall be analyzed under the several heads of the appropriation and recorded in detail by the Paymaster-General of the Army before said accounts are forwarded to the Treasury Department for final audit."

The Act of March 3, 1909 (35 Stat. 747), provides:

“Hereafter whenever pressing obligations are required to be paid by a disbursing officer of the Quartermaster’s Department and there is an insufficient balance to his official credit under the proper appropriation or appropriations for the purpose, he is authorized to make payment from the total available balance to his official credit,”

The same Act at page 750 gave similar authority to Ordnance disbursing officers, and the Act of March 3, 1911 (36 Stat. L., 1056), gave similar authority to Engineer disbursing officers.

The Act of July 9, 1918 (40 Stat. 878), which was limited to “the present emergency,” extended the above provisions to all disbursing officers of the Army.

The Acts of August 24, 1912 (39 Stat. 589), April 27, 1914 (38 Stat. 369), March 4, 1915 (38 Stat. 1080), authorize Army disbursing officers of the Ordnance, Engineer and Medical Departments, respectively, to make payment in settlement of transactions between it and other branches of the War Department and between that department and others.

The Act of July 9, 1918 (40 Stat. 878), provided that “during the present emergency” disbursing officers of the Army might entrust public moneys to other officers for the purpose of having them make disbursements as to their agents, both the disbursing officers and their agents being held pecuniarily responsible to the United States. This authority was made permanent in the Army Reorganization Act of June 4, 1920 (41 Stat. 766).

The Army Reorganization Act also provides:

“The Chief of Finance, under the authority of the Secretary of War, shall be charged with the disbursements of all funds of the War Department”

The extent and variety of the foregoing legislation convinces me that Congress intended, as to the government in general and as to the War Department in particular, that ordinary government payments should be made by disbursing officers.

There was a slight exception to the general practice in cases which disbursing officers referred to the Comptroller of the Treasury for an advance ruling as provided for in Section 8 of the Dockery Act. The Comptroller frequently directed that in such a case the entire account be transmitted to him for direct settlement as a claim. This procedure was not contrary to legislation authorizing the payment of claims by disbursing officers since it did not take from them this duty in any general class of cases. The procedure was incidental to an advance ruling by the Comptroller upon a particular account or claim which had been referred to him by a disbursing officer. It did not give rise to any general power to prohibit payments by disbursing officers.

Section 305 of the Budget and Accounting Act amended Section 236 of the Revised Statutes to read as follows:

“ All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office.”

The only material change in Section 236 made by the amendment was to substitute “ General Accounting Office ” for “ Department of the Treasury.” Section 236 was itself taken without change from Section 2 of the Act of March 3, 1817 (33 Stat. 366).

The terms of Section 305 are mandatory and all-inclusive. Section 236 had never been construed as meaning that the payment of ordinary Government liabilities and every step in their settlement must be in the Treasury Department, but it had been construed to mean that there could be no final adjustment of a claim for or against the United States except as made in the Treasury Department. In 4 Comp. Dec. 332, 335, it was said:

“ The words ‘ settled and adjusted ’ as used in the above section 236 mean audited and certified by the accounting officers.”

This is the meaning which I think must be given to the section as re-enacted in the Budget and Accounting Act. The re-enactment without change of a statute which had previously received long continued executive construction is an adoption by Congress of such construction. *United States v. Falk*, 204 U. S. 143, 152; *United States v. Hermanos*, 207 U. S. 337, 339.

Section 3622, R. S., requires every disbursing officer to forward his accounts to the proper department and requires the department, after examination, to pass them to the accounting officers of the Treasury for settlement.

Section 309 of the Budget and Accounting Act provides:

“The Comptroller General shall prescribe the forms, systems, and procedure . . . for the administrative examination of fiscal officers’ accounts and claims against the United States.”

If disbursing officers should not disburse the public money they would have no accounts subject to “administrative examination.” Section 309 makes it the duty of the Comptroller General to prescribe the “forms, systems and procedure” for the administrative examination of the accounts of disbursing officers. The imposition of this duty shows that the Budget and Accounting Act contemplated that after its passage those fiscal officers authorized to make disbursements would pay out the public money so that their accounts would be forwarded for departmental examination as required by law.

Section 312 (d) of the same act provides as to the Comptroller General:

“He shall submit to Congress reports . . . upon the adequacy and effectiveness of departmental inspection of the offices and accounts of fiscal officers.”

There would be no occasion for departmental inspection of the accounts of disbursing officers if they did not pay out the public funds. Section 312 (d) recognizes that such inspection will continue under the Budget and Accounting Act. This indicates that nothing in the act

was looked upon as taking from disbursing officers their existing power of paying the ordinary obligations of the government upon presentation to them of proper vouchers.

In view of the foregoing I am of the opinion that the Secretary of War would not be justified by reason of anything contained in General Accounting Office General Regulation No. 13 in failing to make, or in permitting or requiring disbursing officers under him to refrain from making, payment as now authorized by law of transportation obligations created by and under authority of the Secretary of War; nor would he be justified in omitting, or in permitting or requiring the omission of, the administrative examination now required by law to be made of disbursing officers' accounts of such payments prior to the transmission of such accounts to the General Accounting Office for settlement.

Respectfully,

H. M. DAUGHERTY,
Attorney General.

Following the receipt of this opinion, the War Department and certain other departments elected to act upon it and refused to comply with the regulations of the General Accounting Office. Other departments, however, ignored the opinion and complied with the regulations. To quote from the annual report of the Comptroller General for 1923: "

The situation now exists in practice that certain departments and establishments are faithfully following the prescribed procedure, while others are paying all bills for transportation services and still others are insisting upon the right to make all payments, are paying most of the bills rendered but forwarding other bills for direct settlement so as to enable this office to adjust overpay-

" P. 5.

ments made by them on bills which they insist upon paying, none of the protesting offices being consistent in observing either the decision of this office or the advisory opinion of the Attorney General. In the meantime large sums are leaving the Treasury in overpayments to carriers. Such as are discovered in the audit, which, because of existing law providing for administrative examination, occurs months after payments are made, will, in most instances be recovered, much to the annoyance and inconvenience of the carriers, to say nothing of the improper use of public funds.

It is not known why the War Department desired to raise the issue, though it was probably due to its desire to stand on what it holds to be its technical rights rather than because it believed that the procedure proposed would not represent an improvement in handling the accounting operations of the government. The fact that there existed considerable friction between the Department and the General Accounting Office growing out of other differences undoubtedly had its influence.

It is not easy to determine as a matter of law whether the Attorney General or the Comptroller General is right in respect to this matter of the Comptroller General's power to require that settlement and adjustment of transportation accounts by his office shall precede the payment of such claims. The matter is one that requires action by Congress rather than the courts, since the decision reached should be based upon the requirements of efficient administration rather than a judicial construction of the law as it now stands.

CHAPTER VI

DIRECT SETTLEMENT AND ADJUSTMENT OF CLAIMS IN THE GENERAL ACCOUNTING OFFICE AS A GENERAL PRACTICE

An account has been given in the chapter immediately preceding of the effort made by the Comptroller General to establish a system under which a certain class of claims, those having to do with transportation, will be directly settled in his office before payment. Though he holds that argument in favor of such a procedure is especially strong in that class of claims, it is his opinion that the system of the direct settlement and adjustment of claims by the General Accounting Office before payment is one that should be generally followed. If adopted such a system will revolutionize the existing system for the settlement and adjustment of claims. Its desirability is, therefore, one meriting careful attention.

It has been pointed out that the payment of the great bulk of claims against the government is made by some three thousand disbursing officers who receive advances from the treasury for this purpose. The popular impression is that the work of the national government is carried on at the seat of government, the District of Columbia. This is not so. All of the big services of the government, the War, Navy, and Post Office departments, the Customs Service, the Bureau of Internal Revenue, the General Land Office, the Indian Service, and the like have great field establishments. The bulk of the activities of the government is performed outside of the District of Columbia, there being located at the seat

of government only the comparatively small headquarters staff. Claims largely originate and are paid in the field. The great majority of disbursing officers are thus located in the field. They are to be found scattered over the United States, in the insular possessions, on battleships, and in foreign countries, where they attend to the payment of obligations arising in connection with the work of American embassies, legations, consulates, and the like.

The accounts of these officers, with their vouchers attached are forwarded to the services and departments with which they are connected. They are then given an examination in the central accounting office of the department and are then forwarded to the General Accounting Office for final settlement and adjustment. It will thus be seen that most if not all of the claims against the government are given three examinations, once by the disbursing officer, once by the central accounting office of the department, and once by the General Accounting Office. The examination made by the central accounting office of the departments is known as an administrative audit. The Comptroller General has raised the question as to whether this triplication of work cannot be avoided to the extent of reducing it to two examinations, that by the disbursing officer who is personally and financially responsible for all payments made by him and that by the General Accounting Office. His proposal takes the direction of abolishing the detailed administrative audit and of having the accounts of the disbursing officers, after only a general examination by the central accounting offices of the departments, go direct to the General Accounting Office for final settlement and adjustment. Speaking on this subject the

Comptroller General, in his annual report for 1923, said:¹

On November 1, 1922, a request was made upon the various departments and establishments for a report of the work performed by such departments and establishments in making the administrative examination of accounts and claims against the United States. These reports are being analyzed, and steps are being taken to prescribe the procedure which shall be followed in making administrative examination of accounts and claims. The reports furnished and other data obtained by this office shows that in many departments and establishments an attempt is being made to make as complete and thorough an audit of each account as is made by the General Accounting Office, and thus to duplicate the work which is imposed upon this office by the terms of the Budget and Accounting Act. A reasonable administrative examination of accounts for information essential to administrative control is not objected to by this office, but a complete duplication of the work which this office must do violates the intention of the law and is a most uneconomical proceeding. In drafting regulations under the provisions of the law cited this office endeavors not to interfere with practices that are necessary for administrative purposes. . . .

It is known that some of them [the departments and establishments] perform more work than is justified. In many quarters, however, it is found that the administrative officers strenuously object to stopping work now performed, although that work must be duplicated elsewhere.

The claim can be made by the departments that the accounts of the disbursing officers can best be examined by officers located in the departments and in immediate contact with all the records and officers responsible for the authorization of the work giving rise to the claims.

¹ Pp. 30-31.

This can be met by having the General Accounting Office examiners physically located in the departments or services involved. Under this arrangement the representatives of the General Accounting Office will perform their duties under the same conditions as that work is now performed by the force conducting the administrative audit.

In respect to one exceedingly important class of claims, one involving the passing upon thousands of claims and the disbursement of millions of dollars, this system has in effect been put into force. Reference is made to the settlement and adjustment of claims in the Veterans' Bureau. Regarding this experiment the Comptroller General, in his annual report for 1925, writes: *

In my last report mention was made of the assignment of a small force of auditing clerks to preaudit all payments to be made by the Veterans' Bureau pursuant to the World War adjusted compensation act. There has been such complete cooperation between the administrative and accounting forces that the results are most gratifying so far as this office is concerned, and advices from the Director indicate equal satisfaction on the part of the Veterans' Bureau. Had this office succeeded in obtaining like cooperation on the part of the War and Navy Departments in the carrying out of said enactment the audit would have been much more satisfactory and large savings probably could have been effected.

After describing in detail the work done, the report continues:

It will thus be seen that through the efforts of the pre-audit unit there was a probable saving to the Government of the following amounts:

Errors in certificates.....	\$86,695.25
Death claims	224,241.00
Dependents' claims	826,133.00

\$1,136,069.25

* Pp. 14.

It should also be remarked that a total of \$62,286.65 was deducted from adjusted service audits to cover indebtedness due the United States on account of overpayments made by disbursing officers, notices of such indebtedness having been furnished the Veterans' Bureau prior to issuance of adjusted service certificates.

In addition to the economics effected in the audit the arrangements with the Veterans' Bureau have saved and will continue to save in the expenses incident to recording and filing the voluminous accounts and related papers. Ordinarily account records must be made in duplicate or triplicate, but the present procedure has saved the making of one copy of each record, not including a saving of approximately \$675,000, representing the estimated cost of photostating service certificates plus the perpetual cost of filing space for the extra copies in the respective offices requiring same.

The differences found in the preaudit are not reported as indicative of lack of case in the Veterans' Bureau but are taken as the natural result obtainable because of the viewpoint of those auditing. However, it is a fair illustration of the desirability of not only a thorough audit of all fiscal transactions but also proves the value of an audit before payment.

That this arrangement was equally satisfactory to the Veterans' Bureau, is shown by the following extract from the annual report of the Director for 1925:

In accord with the arrangement effected with the Comptroller General, a unit of the General Accounting Office was detailed to the Bureau for the purpose of making a preaudit of all certificates issued and of all payments made under the act. Certificates are audited by the General Accounting Office prior to their issuance of a check by the bureau. Under this arrangement a finality in the settlement of the claims is had which per-

* P. 292.

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mits of the present ability of the Treasury, in so far as the adjusted compensation act is concerned, to calculate accurately its obligations. There has been complete cooperation between the General Accounting Office and the bureau in the matter of this preaudit. The arrangement has in no way affected the independent action of the bureau in the administration of the law and has resulted in the adherence to the advanced decisions of the Comptroller General, as provided for by law, before rather than after payments have been made. Not the least important factors in the preaudit plan has been the matter of economy. Had the procedure now employed not been effected, the photostating of necessary proofs relative to each claim would have been required for transmittal to the General Accounting Office. This one item alone has resulted in a saving of approximately \$651,000 of photostating work, not taking into account the photostating of guardianship papers and letters of administration in the cases of incompetent and minor claimants.

The advantages of this system are many. In the first place it substitutes one detailed audit for two, and thus is productive of great economy in the employment of personnel. It effects a further saving by doing away with the transmission of a great mass of documents from the spending services to the General Accounting Office, by avoiding the necessity for making copies of many documents, and by the provision of filing equipment and space for the handling of such extra copies. It means that, in so far as the services at Washington are concerned, the final settlement and adjustment of claims can be made prior to instead of subsequent to payment. Apart from the direct advantage of such preaudit, this results in avoiding a great deal of work and annoyance when a claim is disallowed after payment. Under the latter procedure the General Accounting Office has to notify the

disbursing officer that credit for the payment has been suspended. If he is unable to satisfy the General Accounting Office that such suspension should be lifted, it then becomes necessary for the disbursing officer to seek to secure reimbursement for the payment made from the person to whom the payment was made. Failing in this effort, the disbursing officer must seek to have his liability removed by securing a special relief act from Congress. All this involves a great mass of correspondence and trouble, not only to the disbursing officer but also the person to whom the payment was made.

It must be recognized that the new procedure is one that may be much more applicable in some classes of claims than others. If it is accepted in principle, the desirable procedure would be to have it introduced gradually; being applied to one class of claims after another as investigation reveals that its application is advantageous. It is desirable that legislation should be had expressly conferring upon the Comptroller General the power to put this system into force. This legislation can take the form either of authorizing the Comptroller General to prescribe this system wherever he deems it advisable or authorizing him to do so where the consent of the department or service involved is secured.

The second obstacle is the attitude that certain departments, and particularly the War and Navy departments, take towards all efforts made by the Comptroller General to modify existing practices. This attitude is one of standing upon technical rights and opposing changes even though it can be clearly shown that the change is in the interest of efficient and economical administration. As the Comptroller General has pointed out in the extract from his annual report above reproduced, the arrange-

ment made with the Veterans' Bureau could have been made still more effective had the War and Navy departments been willing to cooperate with the General Accounting Office in the same way as the Veterans' Bureau. The attitude of hostility to the General Accounting Office is, it is believed, due to a very general failure on the part of administrative officers to understand the real functions of that office and only partially to the general unwillingness of services to have transferred to other agencies work now being performed by them.

CHAPTER VII

SETTLEMENT AND ADJUSTMENT OF CLAIMS DUE THE GOVERNMENT

It has been pointed out that the primary function of the Comptroller General is to control all treasury receipts and issues. In the same way that it is the duty of the Comptroller General to follow up, as it were, treasury issues and see that they are applied only in ways sanctioned by law, so it is his duty to go back of the mere fact of covering of money into the treasury and satisfy himself that all moneys due the government are in fact collected and offered for covering into the treasury. The performance of this duty is commonly described as the audit of receipts. This designation is, however, a misleading one, since, as has been pointed out, the work consists not so much in seeing that all public moneys received by government officers are duly accounted for, as that of seeing that all public moneys which should be collected by government officers are in fact collected and offered for deposit in the treasury. A more accurate designation of this duty is, therefore, the one chosen for the title of this chapter, the "settlement and adjustment of claims due the government." This broad function is imposed upon the General Accounting Office by Section 305 of the Budget and Accounting Act, 1921, which reads:

All claims and demands whatever by the government of the United States or against it, and all accounts whatever in which the government of the United States is

concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office.

It will be seen from a reading of this section that just as the duty of the Comptroller General to settle and adjust claims against the government is something quite different from a mere audit of payments after claims have been settled and paid, so the settlement and adjustment of claims by the government goes far beyond that of the mere audit of collections made. Unless this distinction is clearly kept in mind, it is impossible to understand the true function of the General Accounting Office in respect to this important matter of control from both the receipt and expenditure side of financial operations.

Of the need for an agency that will have this broad duty of seeing that all moneys due the government are collected and covered into the Treasury, there can be no doubt. Whenever investigations have been made of the administrative branch of government, numerous cases have been developed where administrative officers having the duty of enforcing the payment of moneys due the government have failed to perform their duties properly, with the result that the government has lost large sums of money which it should have received. When the present writer some years ago assumed the position of Treasurer of Porto Rico he found that, though there was a law upon the statute books that foreign corporations doing business in Porto Rico were required to pay an annual license fee of \$25 for the right to do business on the Island, many of them had for years failed to make such payments, and that the Auditor had contented himself with seeing that all payments actually made were duly accounted for but had not sought to satisfy himself

that all payments that should be made were in fact made. This matter was brought to the attention of the Auditor with the result that the payment of all sums due in the past was secured and a new system put into effect by which all payments due in the future were likewise enforced. That a similar failure exists in the national government in the enforcement by officers of the government of the payment to the government of moneys due it, has been brought out repeatedly by investigations made by the General Accounting Office. Thus the Comptroller General, in his annual report for 1923, says:¹

Investigation at the naval housing project, Indianhead, disclosed the practice followed for several years in collecting rents from public buildings and using such rentals to maintain the buildings and the general community interests, such as schools, community houses, etc. It was developed that funds at this place and at three other housing projects were being collected and expended entirely outside of the regular accounting required by law. Upon making special report to the Secretary of the Navy, the latter issued instructions to all supply officers requiring such funds to be accounted for in the regular way.

At the request of this office, following an investigation of the subject, the Attorney General issued instructions requiring an accounting to the General Accounting Office for all proceeds of sales of seized property in connection with the accounts rendered by United States marshals.

Investigation of the office of the chief clerk Court of Claims disclosed the fact that little, if any, effort is made to collect costs adjudged in favor of the United States, resulting in a large accumulation of such items that are not likely to be recovered at this late date.

It has been seen that, though the general principle of the settlement and adjustment of claims against the

¹ Pp. 32-33.

government by an independent agency is clear, much difficulty has been encountered in its practical application. The same is true as regards the settlement and adjustment of claims in favor of the government. This difficulty, which has resulted in a direct clash between the General Accounting Office and the agency most responsible for the collection of government receipts, the Treasury Department, has arisen from the fact that Congress has in the past made special provision for the examination and audit of certain classes of receipts by specially designated administrative officers, and it is held by the Treasury Department and denied by the General Accounting Office that the results of such administrative audits are final and conclusive and not subject to review by the General Accounting Office except for the general purpose of verifying mathematical calculations and detection of fraud. This difference of position raises two issues, one as to the proper construction of the law as it now exists, and the other as to which of the two constructions, as a matter of proper and efficient administration, should prevail. The attempt will be made, first, to examine the issue of the existing situation as a matter of law; after that consideration will be given as to how the issue should be adjusted as a matter of good administration.

In considering this question of law now determining the manner in which claims in favor of the government shall be settled and adjusted, it is necessary to distinguish between three classes of government receipts: (1) Miscellaneous receipts; (2) internal revenue receipts; and (3) customs receipts.

In respect to the first of these three classes no difficulties of fundamental or general importance have arisen

in administering the law. In no case has special provision been made for an examination by an administrative officer of collections made by other officers, and it is generally recognized and acquiesced in by the administrative services that all claims on behalf of the government on account of such receipts are to be finally settled and adjusted by the General Accounting Office. If there are any such provisions for an administrative audit and settlement, they are of a very special character and of relatively small importance.

In respect to the second class, internal revenue receipts, the law has made careful provision for an audit of such receipts by a special force of officials constituting a part of the office of the Commissioner of Internal Revenue,³ and has in addition created an independent agency known as the Board of Tax Appeals to hear and determine appeals from the action of the Commissioner of Internal Revenue assessing taxes to be paid. In respect to the conclusiveness of the determination of the sums due by taxpayers to the government thus made a section (1107) of the Revenue Act of 1926 provides as follows:⁴

In the absence of fraud or mistake in mathematical calculation, the findings of facts in and the decision of the Commissioner upon (or in case the Secretary [of the Treasury] is authorized to approve the same, then after such approval) the merits of any claim presented under or authorized by the internal-revenue laws shall not, except as provided in Title IX of the Revenue Act of 1924 [relative to the Board of Tax Appeals], as amended, be subject to review by any other administrative or accounting officer, employee, or agent of the United States.

³For an account of this system see *The Bureau of Internal Revenue* (1923). Institute for Government Research, Service Monograph No. 25.

⁴44 Stat. L., 9, 113.

In respect to internal revenue receipts it will thus be seen that the functions of the General Accounting Office are restricted to an audit only; that is, to seeing that all collections made are duly accounted for and covered into the treasury, but that it has no authority to determine what collections of internal revenue should be made. It "audits" but does not "settle and adjust" receipt claims of this class. In view of the specific provisions of law that have been quoted, the General Accounting Office has not attempted to do other than audit in a strict sense the accounts of the collectors of internal revenue and, so far as the writer is aware, no serious differences have arisen between the General Accounting Office and the Bureau of Internal Revenue in the performance by the former of its duties.

Turning now to the third class of receipts, those derived from customs due, a somewhat different condition of affairs is found. Here, too, careful provision has been made for the examination and audit of customs collections by a special force of administrative officers. This system dates from the passage of the first tariff act. Thus the act of July 31, 1789, which was the first act of Congress relative to the customs, provided for the appointment as a part of the Customs Service of so-called "Naval Officers," whose duty it was to receive copies of all manifests and entries, to estimate together with the collectors of customs the duties to be paid on all goods entering the country, to keep a separate record and countersign all permits, clearances, certificates, debentures, and other documents granted by the collectors, to examine the collectors' abstracts of duties and other accounts of receipts, bonds, and expenditures, and to certify the same.

The Tariff Act of 1922 changed the title of these officers to that of Comptrollers of Customs and set forth their duties as follows (Sec. 523):⁴

Comptrollers of Customs shall examine the collectors' accounts of receipts and disbursements of money and receipts and disposition of merchandise and certify the same to the Secretary of the Treasury for transmission to the General Accounting Office. They shall perform such other duties as the Secretary of the Treasury may from time to time prescribe, and this administrative examination shall extend to all customs districts assigned to them by the Secretary of the Treasury.

Comptrollers of Customs shall certify all assessments of duties and allowances of drawbacks made by collectors in connection with the liquidation thereof. In cases of disagreement between a collector and a comptroller of customs the latter shall report the facts to the Secretary of the Treasury for instructions.

Provision is also made for a review of the action of collectors of customs in assessing duties first by a United States Customs Court,⁵ formerly the Board of General Appraisers and secondly on appeal by a special tribunal known as the United States Court of Customs Appeals. The Tariff Act thus provides that (Secs. 514-15):⁶

All decisions of the collector, including the legality of all orders and findings entering into the same, as to the rate and amount of duties chargeable, and as to all actions of whatever character (within the jurisdiction of the Secretary of the Treasury), and his decisions excluding any merchandise from entry or delivery, under any provision of the customs revenue laws, and his liquidation of any entry, or refusal to pay any claim for

⁴ 42 Stat. L., 858, 974.

⁵ 44 Stat. L., 669.

⁶ Pp. 969-70.

drawback, or his refusal to reliquidate any entry for a clerical error discovered . . . shall be final and conclusive upon all persons, unless the importer, consignee, or agent of the person paying such charge or exaction, or filing such claim for drawback, or seeking such entry or delivery, shall . . . file a protest in writing with the collector setting forth distinctly and specifically, and in respect to each entry, payment, claim, or decision, the reasons for the objection thereto

Upon the filing of such protest and payment of duties and other charges the collector shall within sixty days thereafter review his decision, and may modify the same in whole or in part and thereafter refund any duties, charge, or exaction found to have been collected in excess, or pay any drawback found due. . . . If the collector shall, upon such review, affirm his original decision, or, upon the filing of a protest against his modification of any decision, the collector shall therewith transmit the entry and accompanying papers, and all the exhibits connected therewith, to the Board of General Appraisers for due assignment and determination as provided by law. Such determination shall be final and conclusive upon all persons, and the papers transmitted shall be returned, with the decision and judgment order thereon, to the collector, who shall take action accordingly, except in cases in which an appeal shall be filed in the United States Court of Customs Appeals within the time and in the manner provided by law.

It will be seen from a reading of these provisions that Congress has provided for an administrative audit by a separate force of administrative officers of customs receipts and for a review of administrative determinations by a judicial or quasi-judicial body analogous to that provided for the administrative audit of internal revenue collections.¹ In the case of customs receipts there is, how-

¹ For an account of this system see *The Customs Service (1924)*, Institute for Government Research, Service Monograph No. 33.

ever, no provision of law such as exists in the case of internal revenue receipts expressly stipulating that, in the absence of fraud or mistake in mathematical calculations, the findings of fact as determined by the administrative service and the review body shall be conclusive as regards the merits of the claims and not subject to review by any other administrative or accounting officer. Furthermore Section 523 of the Tariff Act of 1922 has a clause immediately following the paragraphs that have been reproduced above, defining the duties of the Comptroller of Customs, which reads:

This section shall not be construed to affect the manner of appointment, the term of office, or the compensation of any such officer as now provided by law, nor to affect the provisions of the Budget and Accounting Act, 1921, approved June 10, 1921.

In view of the fact that there is no express provision of law that the findings of fact in respect to the merits of claims by the government arising out of the administration of the customs law shall not be subject to review by the accounting officers of the government, and basing his position, partly on the clause of the Tariff Act just quoted that the sections of this act defining the duties of comptrollers of customs shall not affect the provisions of the Budget and Accounting Act, 1921, and partly on the general duty imposed upon the General Accounting Office to settle and adjust all claims whether in favor of or against the government, the Comptroller General has taken the position that it is his duty to settle and adjust all claims in favor of the government arising out of the administration of the custom laws.

In acting upon this position, the Comptroller General on April 25, 1923, notified the Secretary of the Treasury

that thereafter collectors of customs would be required to submit certain papers with their accounts in support of reports of collections made and payments on account of drawbacks, these papers being deemed necessary in order that the General Accounting Office might review the action of the collectors in assessing and collecting customs duties and determine finally whether the proper amounts had been collected.

The Secretary of the Treasury immediately took issue with the Comptroller General in respect to his right to demand the transmission to him of the original papers, and, more fundamentally still, in respect to his authority to review the action of the customs officials in fixing the duties to be paid, and requested an opinion of the Attorney General on the matter. This the Attorney General gave, in an opinion dated October 21, 1924,^o in which the powers and duties of the Secretary of the Treasury and the Comptroller General in respect to the enforcement of the customs laws are reviewed at length and the conclusion reached that the Comptroller General did not have the responsibility or authority asserted by him. His conclusions are stated in the following terms:

Nowhere is there found any statute, prior to the enactment of the Budget and Accounting Act authorizing the Comptroller of the Treasury to review the discretionary acts of the Secretary of the Treasury or the decisions of the collectors of customs in the classification of merchandise, the liquidation of entries of imported merchandise, or the allowance and payment of drawbacks on drawback entries. Nor does the Budget and Accounting Act confer this reviewing power upon the Comptroller General.

Section 309 of the Budget and Accounting Act authorizes the Comptroller General to "prescribe the forms,

^o 34 Op. Atty. Gen. 311.

systems, and procedure for administrative and fund accounting in the several departments and establishments," but does not confer any authority on the Comptroller General to review the decisions of the collectors in liquidating entries of imported merchandise under the regulations promulgated by the Secretary of the Treasury, nor to promulgate regulations for the administration of the Customs laws. This power, by the tariff act, is reserved to the Secretary of the Treasury.

And again in another part of the opinion:

Nowhere in the tariff act of 1922 or in the Budget and Accounting Act of 1921 has there been given to the Comptroller General the power of reviewing the acts or decisions of the collector of customs in the liquidation of entries of imported merchandise or the allowance and payment of drawbacks on drawback entries. Nor has there been conferred upon the Comptroller General the power to review or modify the regulations promulgated by the Secretary of the Treasury for the administration of the customs laws.

In pursuance of this opinion of the Attorney General and acting under instructions from the Secretary of the Treasury, the collectors of customs refused to transmit to the Comptroller General the documents requested by him. The Comptroller General on his part declined to acquiesce in the opinion of the Attorney General and refused to settle the accounts of the collectors of customs until his demand for the documents specified had been met. The result is an impasse so far as the settlement of the accounts of the collectors of customs is concerned, these accounts, amounting to many millions of dollars, remaining at the present time unsettled.

As regards the merits of this controversy from the purely legal standpoint it would appear that the conten-

tions of the Comptroller General rest upon a very frail basis. In view of the fact that, prior to the creation of the General Accounting Office, no such power of review over the determinations of the Customs Service had ever been successfully asserted by the general accounting offices, it is hardly to be presumed that Congress, in passing the Budget and Accounting Act and in making casual reference to the act in the Tariff Act of 1922, intended to authorize any such radical change in respect to the administration of this important service. Had it had any such change in mind, it would have made specific provision therefor. It would appear, moreover, that a recent decision of the Supreme Court of the United States has definitely settled this issue in favor of the contentions of the Secretary of the Treasury and the Attorney General. Precisely this question of the power of the Auditor of the Philippine Islands to review the findings of fact of the customs officer was presented in the case of Ben. F. Wright, Auditor for the Philippine Islands v. Ynchausti and Co., and the Supreme Court of the United States, to which the case was carried on appeal, decided that the auditor had no such right, that the decision of the customs authorities was conclusive as regards the facts, and that the functions of the auditor in giving effect to this decision were of a purely ministerial character.* The opinion in this case was delivered by Chief Justice Taft and was a unanimous one. In the course of this opinion, Mr. Justice Taft said:

This history shows that since the beginning of civil government in the Philippines the policy of the Island government has been to take out of the jurisdiction of the Auditor contested claims for refund of duties based

* *Wright v. Ynchausti & Co.*, U. S. Supreme Court, Decided Dec. 13, 1926.

on protest and involving a re-examination of the action of the local collectors of customs by the Insular Collector in assessing such duties. The decisions of the Insular Collector with respect to refunds of this class were administratively final but appeals from his conclusions, if duly taken became the subject of judicial examination, at first by the Court of Customs Appeals, and afterward by the Court of First Instance of the proper jurisdiction and by the Supreme Court. . . .

In view of this legislative history, it is not difficult to reach a conclusion and to define what the function of the Auditor of the Islands in such a case as this is. To take money out of the Treasury on appropriation, a warrant has to be drawn by the head of the bureau having the payment of the claim in charge and the warrant must be countersigned by the Insular Auditor before it is paid; but when the Insular Auditor is not vested with administrative discretion to pass upon the merits of the claim for which the warrant is drawn, his only function is to determine whether the warrant is drawn by the proper officer upon the decision of the proper tribunal and is applicable to an existing appropriation, and having been satisfied as to these preliminaries his duty is merely ministerial.

Though this decision related to a case arising under the laws of the Philippine Islands, there can be no doubt that the principles enumerated in the decision apply with equal force to the government of the United States, since the Philippine law and system were directly modelled upon the law and system in force in the United States.

Though this decision may be taken as definitely settling the issue that is under consideration from the standpoint of law, it does not of course touch the matter of which system is the one which from the standpoint of expediency should be provided for by Congress. This issue, it should be noted, is one of great importance and goes

beyond that of how the settlement and adjustment of customs claims shall be made. There is no difference, from the standpoint of either principle or expediency, between the settlement of claims arising in the customs administration and those arising in connection with the administration of the internal revenue laws. If the Comptroller General is to be given reviewing power in respect to one, the same duty should be imposed upon him in respect to the other.

In considering this issue, the first point to be noted is that the Comptroller General and the Secretary of the Treasury are as far apart in respect to this phase of the problem as they were in respect to its legal aspect according to existing law. The Comptroller General held that legislation should be secured from Congress that will definitely entrust to his office complete powers of review and the making of final settlement and adjustment of both internal revenue and customs collections. The Secretary of the Treasury, on the other hand, believes that legislation should be enacted that would apply to the customs administration the same provision that now exists in respect to the internal revenue administration that in the absence of fraud or mistake in mathematical calculations, the findings of fact in respect to the merits of claims as found by the officers of the customs shall be conclusive and not subject to review by any accounting officer. Bills representing these two points of view have been introduced in Congress and are now pending action.*

* A bill representing the Treasury viewpoint was introduced in the House of Representatives on April 1, 1926, by Representative Chindblom. This bill was referred to the Committee on Ways and Means, which held hearings on it on April 16, 1926, at which the author of the bill appeared and introduced as a part of his testimony much of the correspondence that had taken place between the Comptroller General and the Secretary of the Treasury relative to the demand by the former that his office be furnished

The arguments in favor of these two positions can in large part be presented by reproducing the statements contained in the correspondence that took place between the Comptroller General and the Secretary of the Treasury and between these two officers and Representative Chindblom, who had invited from them comments on a bill which he proposed to introduce for the settlement of the issue on the basis of the Treasury contention.

The arguments of the Secretary of the Treasury in favor of an administrative audit that will be final and conclusive, except as modified by the appellate tribunals on appeal by aggrieved taxpayers, are: (1) That this is the system that has been in operation since the beginning of the government; (2) that it furnishes all necessary check upon the collection officers; (3) that it has in fact worked with eminent satisfaction; (4) that, in its failure to develop defects or evils, there is no reason for now departing from it; (5) that the establishment of a further review by the General Accounting Office would involve an enormous duplication of work, interfere seriously

with the documents necessary to enable him to audit the accounts of the collectors, communications by these two officers addressed to the author of the bill commenting upon its provisions, and the opinion of the Attorney General supporting the Treasury contention. The Committee on May 7, 1926, favorably reported the bill, its printed report reproducing the documents above cited (69 Cong., H. rept. 1137). The bill was taken up by the House under suspension of the rules and passed on June 7, 1926. In the Senate a favorable report was made by the Committee on Finance June 9, 1926 (69 Cong., S. rept. 1026). Though called up for consideration on the same day, no action was taken and the bill went to the calendar, the session closing before other action was taken. It should be said that neither at the hearings before the House Committee nor in the debate on the floor of the House and the Senate was there any adequate consideration of the issues involved. Especially was there no attempt on the part of any one to present the contentions and arguments of the Comptroller General against the bill. For reasons which are not known, the Comptroller General did not appear and testify at the committee hearings, the only witness being Mr. Chindblom, the author of the bill, who was acting at the request of officers of the Treasury Department.

with the operation of the collection service through the demand made for the furnishing of documents, and entail great delay in the final settlement of payments that would work a hardship upon importers and taxpayers; (6) that the work of checking and verifying the action of collectors is of an administrative character that must be performed in immediate contact with and concurrently with the work performed by the collectors; (7) that this work, both of the collectors and comptrollers or auditors, is of a very technical character and can only be efficiently performed by persons having technical as well as accounting qualifications; (8) and that any attempt to substitute an audit by an independent auditing agency would disrupt the organization for the administration of the customs and internal revenue laws, require the building up of two technical services, and inevitably entail additional work and expense.

In elaboration of these arguments, the following may be quoted from the correspondence on the subject. In his letter of March 31, 1926, to the Comptroller General, Mr. Winston, Acting Secretary of the Treasury said:

Each port or district has been assigned to one of the comptrollers of customs, who makes the same administrative examination and verification as was made at the former naval office ports. The collector and the comptroller act entirely independent of each other, consequently there is a complete verification by the comptroller of customs of the work of each collector of customs. A verification of the amount of duties chargeable and collected the amounts due as refund of excessive duties and the amounts due as drawback are thus fully proven by independent and disinterested audit. In case of disagreement between them the facts are reported to the Secretary of the Treasury for instructions. . . .

No reason appears why there should be a change in the long continued practice in settling the accounts of collectors of customs. The verification of all transactions by separate and independent officers of the government assures that the correct amount of duties are assessed and collected and that the correct amounts are paid as refunds or as drawbacks. The customs collections are administratively verified in a more thorough manner than any other large class of revenues.

It is not understood that it has ever been alleged that the verification of the collectors' revenue accounts has not been efficiently accomplished by the comptrollers of customs, and it is manifest that efficient administration would not endorse another audit of an account that has already been thoroughly scrutinized and reviewed by efficient and specially trained auditors. Obviously a second efficient review would require a large additional force of trained employees.

The audit as now conducted by the comptrollers of customs is a part of the collection operation and is simultaneously accomplished. There is a distinct benefit in such a procedure for it authoritatively determines the amount of the tax due and permits the importer to dispose of his merchandise with exact costs known.

If the Comptroller General may reaudit the collection and overrule findings, authoritative settlement with the importer will not occur until the money account of the collector is cleared many months subsequent to the audit that has been made by the comptroller of customs. Furthermore, a complete audit by the General Accounting Office would require that all the documents relating to entries, repayments and drawbacks accompany each collector's money account. As some two thousand entries of merchandise are filed daily at New York alone, the task of preparing the accounts would be very great, for each entry verification comprehends the review of many supporting certificates and reports. The documents that would be thus required to be transmitted with the money accounts are a necessary part of the collector's files, for

they must be referred to currently in order to permit the collector's operations to be carried on properly, and they must be available for call by the Board of General Appraisers [Customs Court] and the Court of Customs Appeals. Those tribunals have been set up especially to review the customs cases on appeal and the many calls for the records must be complied with. Finally, the comptrollers of customs are the officials who are required by law to verify customs collections. It is their sole duty and it is for that particular purpose that their offices were created.

In a letter to Representative Chindblom under date of April 17, 1926, Mr. Winston elaborates upon the essential administrative character of the duty of determining what duties, drawbacks, and refunds should be made. He says:

The collector of customs prepares an abstract of the amounts of duties collected, amounts refunded as excessive duties and amounts paid as drawbacks. The comptroller of customs examines these abstracts and certifies to their correctness. It is the contention of the Treasury Department that those abstracts so certified are all the evidence that the Comptroller General should receive showing the amounts of duties collected, excessive duties refunded and the amounts due as drawbacks. It is a fact that customs collections are the most thoroughly audited of the large government receipt accounts. The determination of the amount of duties chargeable in a particular case and the collection thereof is a purely administrative function. That duty is now being performed in a highly efficient manner and no reason appears why collectors of customs should be required to furnish the documents which the Comptroller General claims will enable him to verify the amounts chargeable and collected.

It has been estimated that at the port of New York alone forty additional employees would be required to prepare the papers which the Comptroller General has de-

manded in support of the collector's accounts of receipts and refunds. There would be added a large additional expense in the General Accounting Office in examining the papers which the Comptroller General is demanding.

The futility of a detailed examination of receipt accounts by the Comptroller General is apparent. Should he determine in a particular case that the full revenue has not been collected such a determination by him would be without force for it is manifest that the collector could not be held personally liable for an error in judgment in applying the rate or in determining the value. If the collector has been negligent or is incompetent that is a matter for administrative action and discipline. As the Comptroller General is without means of enforcing his decision in such administrative matters, they should be left entirely in the hands of the administrative officers who must be presumed to be fully as honest, efficient and diligent in the discharge of their duties as is the Comptroller General.

In reply to these arguments, the Comptroller General maintains: (1) That the fundamental purpose of the creation of the independent General Accounting Office was to strengthen control over the administration in respect to all financial transactions, whether of receipts or expenditures; (2) that there is the same need for an independent audit of receipts that will address itself to the question as to whether all sums legally due the government are in fact collected that exists in the case of expenditures that includes a determination as to whether such expenditures were in accordance with law; (3) that the audit of customs and internal revenue receipts is now an administrative audit corresponding to the administrative audit of expenditures and should no more be final and conclusive than now is the administrative audit of expenditures; (4) that the present system violates the

fundamental requirement of a proper audit system in that the officers conducting the audit are not independent of the officers whose accounts are to be audited, since both the collectors and the comptrollers or auditors are parts of the same organization and subject to the same superior authority, the Secretary of the Treasury; and (5) that this violation of principles can only be corrected by vesting in the General Accounting Office the final settlement and adjustment of customs and internal revenue receipts.

In respect to the practical difficulties involved in putting this principle into effect, the Comptroller General admits that a complete audit of customs and internal revenue receipts superimposed upon the present administrative audit would represent an indefensible duplication of organization and work and result in unpardonable delays in the settlement of accounts with individual taxpayers and importers. It is therefore urged by him not that the powers to make such an additional audit should be confirmed or granted to him, but that the audit by the General Accounting Office should be substituted for that now conducted by the comptrollers of customs in the Customs Service and the auditors in the Bureau of Internal Revenue. To this end legislation has been proposed that will transfer these two administrative audit forces from the services mentioned to his office. It is contended that if this is done the work of audit will be conducted as at present; that is, so far at least as customs receipts, refunds, and drawbacks are concerned, the work will be done in the field and concurrently with the work of the collectors of customs, the only essential difference between that system and the one now in force being that the auditing officers will be officers of the General Ac-

counting Office and working under its direction and control.

In respect to the Board of Tax Appeals and the Customs Court and the Court of Customs Appeals he contemplates no change, but points out that these bodies perform the function of protecting the individual taxpayers or importers from being required to pay more money than can properly be demanded of them but functions but feebly if at all in protecting the treasury by ensuring that all moneys that should be paid are assessed and paid to the government.

The general position of the Comptroller General is stated by him in his annual report for 1925 ¹¹ in the following words:

There should be a single agency empowered and directed to audit all fiscal transactions of the Government without let or hindrance as to classes, rather than the present conflicting provisions with so many constructions and express exceptions. . . .

To correct the situation would not only require all revenue and expenditure accounts to be audited and settled by a single agency but such audit should be before the accounts are closed by final receipt or payment.

In a letter to Mr. Winston, Undersecretary of the Treasury, dated February 10, 1925, the Comptroller General further says:

While I have long been convinced that the most satisfactory, prompt and economical audit would be a pre-audit made at the ports, so that collectors would be provided with adequate protection and importers given prompt information as to amounts due, I am willing, as I have heretofore stated, and to the end that the plan

¹¹ P. 1.

may be given a fair trial, to join in request for legislative authority for this office to make such portion of the audit in the field as is practicable.

From the standpoint of principle it is difficult to get away from the position that has been taken by the Comptroller General. If it is desirable that all expenditures shall be audited by an agency independent of the spending services, it would seem to be equally necessary that there should be an audit of receipts also independent of the collection services. It may be that the comptrollers of customs perform their duties independently of the collectors of customs, but they as well as the collectors of customs are subordinates of the Secretary of the Treasury. In case of differences between the two, the matter is referred to the Secretary of the Treasury. The latter can disregard the opinion of a comptroller of customs and order that the action of the collector be approved. Only in exceptional cases can the Secretary of the Treasury be personally familiar with the technical problems of tariff or internal revenue administration. He must perforce rely upon the advice of subordinates having such technical competence. This means that in effect he must rely upon the officers of the service having in charge the collection of these revenues.

It may be and probably is true that the country has enjoyed an honest and highly competent administration of the internal revenue and customs laws. The administration of these laws involves the making of classifications and rulings which affect to the extent of millions of dollars the revenues received. Those rulings that are unfavorable to the importer or taxpayer may be contested in the Board of Tax Appeals, the Customs Court, and the Court of Customs Appeals; those which are favorable

to the importer or taxpayer are as a rule not questioned. A ruling once made is generally followed without further examination. It may well be that an independent review of these rulings with a view to protecting the interests of the treasury might reveal many cases where inadequate amounts have been demanded of taxpayers.

This principle that there should be an independent audit of customs revenue was endorsed by the President's Commission on Economy and Efficiency. In its report recommending the consolidation of the offices of the six auditors for the departments with the office of Comptroller of the Treasury, it said:

The method of auditing the revenues from customs duties is in fact an exception to the general rule regarding the audit of government accounts. The revenues from the ports of New York, Boston, Philadelphia, Baltimore, Chicago, New Orleans and San Francisco, amounting to about \$300,000,000 annually are audited only by the naval officers at those ports. The Auditor for the Treasury Department receives the reports of revenues collected but does not receive the evidence upon which he can determine the correctness of the reports. The Commission is of the opinion that the naval officers who perform the duties of auditors but are subordinates of the department administering the customs laws, should be assistant auditors of the Treasury and with their employees form a part of the force of the Auditor of the Treasury although not located in the main office at Washington. The bringing of the final audit of all governmental accounts to the auditor and giving him the management and control of all such work is a change much to be desired. The present Auditor for the Treasury estimates a saving of \$75,000 would be accomplished by this change. The Commission believes the estimate is conservative, but aside from the question of saving money from salaries, the increase in the efficiency of the

audit is of great importance and would probably result in the collection of additional revenue."²⁸

In the Bureau of Internal Revenue conditions from the standpoint of an independent audit of claims is even more unsatisfactory than in the Customs Service. In the latter service, as has been pointed out, there is a separate audit by the special force of comptrollers of customs, the only objection to this audit being that it is not made by a force independent of the head of the Customs Service, the Secretary of the Treasury. In the Bureau of Internal Revenue there is not only no such separate review of the settlement of claims, but in other respects conditions are, from the standpoint of principle at least, unsatisfactory. In 1924-25 a detailed examination of the work of this Bureau was made by a select committee of the Senate under the chairmanship of Senator Couzens. In a partial report submitted by this committee in 1926, the following criticisms of the procedure of the Bureau in handling its work were made: "²⁹

The work of auditing tax cases is divided among several audit divisions. Individual returns are audited by the personal audit division. The consolidated audit division has jurisdiction over the affiliated corporations, and the corporation audit division has jurisdiction over the nonaffiliated corporations. These audit divisions are divided into sections.

In each audit division there is a review section, the function of which is to review the work of the various audit sections in the division. In the engineering division the work of the engineers is reviewed in the section which has jurisdiction over the case.

²⁸ Message of the President of the United States Transmitting Reports of the Commission on Economy and Efficiency, April 4, 1911. 62 Cong., H. doc. 670, p. 408.

²⁹ 69 Cong., S. rept. 27, pp. 224, 229-30, 235-36, 238.

It will be noted that the head of the division has jurisdiction over the review of the work done in his division.

If a taxpayer is dissatisfied with an allowance made by the engineering division or the allowances and determination of tax by the audit division in which his case is handled, he has a right to appeal. If, however, the taxpayer is satisfied with the allowances made by the engineering division and with the tax as determined by the particular audit division involved, there is no further review of his case unless it involves a refund of \$50,000 or more, in which event the certificate of over-assessment must be submitted to the solicitor for approval. While refunds which the solicitor has refused to approve have been allowed and paid, the refusal of the solicitor to approve a refund brings the case to the attention of the Commissioner. The refund to the National Aniline and Chemical Co., which has been discussed under the subject "Interested capital," is such a case.

While the heads of the engineering and audit divisions may call upon the "rules and regulations section" or the solicitor for a ruling on a question of law, they are not required to do so. If the ruling of the head of a division is satisfactory to the taxpayer, even though it may be upon a novel question not covered by any published ruling, or even though it may be in direct conflict with the law, the regulations, and every published ruling on the subject, there is no way under the established procedure for this case or this ruling to be brought to the attention of any superior authority or to ever reach publication, that other taxpayers may claim the benefit of it.

Except in cases involving a refund of \$50,000 or more, all of the authority vested by law in the Commissioner of Internal Revenue is exercised by the head of a division upon whose action there is no check, unless the taxpayer is dissatisfied. . . .

Many of the principles, practices, methods, and formulae applied in determining taxes [tax liability] have never been reduced to writing, and only about 15 per cent of the formal written rulings have ever been published.

This failure to promulgate and publish the principles and practices to be followed in determining tax liability has resulted in gross discrimination between taxpayers similarly situated. Taxpayers desiring the benefit of the most favorable practices have been forced to employ former employees of the Income Tax Unit and pay immense fees for information which should be freely available to everybody. The premium thus placed upon the value of unpublished information is the cause of the immense turnover among the employees of the unit and creates a necessity for salaries entirely out of range with what the Government pays for similar services in other bureaus.

This failure to promulgate and publish adequate rulings has retarded the settlement of the law and practice of the department. This unsettled condition of the law and practice has encouraged the filing and prosecution of claims and requires the continued discussion and consideration of questions which should have been long since disposed of by established precedents.

Uniformity in the taxation of those similarly situated is the first and fundamental requisite of any just system of taxation. Such uniformity cannot be accomplished unless tax liability is determined in accordance with principles uniformly applied.

The most serious defect in the administration of the income tax law is the absence of any adequate statement of the departmental construction of the provisions of the law, the principles, formula, and methods applied, and the practice and procedure followed in determining tax liability.

The promulgation of such information for the guidance of the thousands of employees of the Income Tax Unit is absolutely essential to the uniform treatment of taxpayers. Complete information as to how his tax is to be computed should be available to every taxpayer, that all taxpayers similarly situated may claim and insist upon the benefit of any principle or practice applied to any of them. Furthermore, such information should be

available to Congress, that it may know how the tax laws enacted by it are interpreted and applied and intelligently judge of the advisability of or necessity for amendment.

By vesting all discretionary powers under the revenue acts in the commissioner, Congress clearly evidenced an intention to hold him solely responsible for the exercise of all delegated powers. If the commissioner is to exercise the authority vested in him by the revenue acts, and is to be responsible for the administration of the law, all rules interpreting the law and providing for its application to particular cases should be personally approved by him in writing.

While it may be assumed that Congress did not intend that the commissioner should pass on individual cases, it must be assumed that the revenue acts do contemplate that he shall determine the principles, rules, and formula which shall be applied by his subordinates. If this task is too great to be performed by one man, Congress should create a board or commission of several members to exercise the authority now vested in the commissioner. . . .

Our system of legal and equitable jurisprudence are both the result of accumulated precedent, arising out of the decisions of courts, in the application of law and equity to particular cases. This body of law is evidenced by, and is preserved in, the written decisions of the courts. When the courts give to a statute a construction which is contrary to the public will, the Congress or the State legislature are advised by the publicity given the decision of the construction so given it by the courts and can amend it. Anyone desiring to know how a statute has been construed by the courts has but to look to the published decision," which are open to everyone. A system of jurisprudence which provided for the secret trial of cases without published decisions and guided by no published rules would not be tolerated by any free, self-governing people. . . .

Under the present practice it is doubtful whether the Commissioner, in whom all authority under the act is vested, has the least idea how the law is being construed

and applied in the case of satisfied taxpayers. It is certain that, under the present procedure, there is no provision for bringing the principles applied to such cases to the commissioner's attention. . . .

The unsatisfactory conditions developed by this investigation are the inevitable result of the delegation of almost unlimited discretion to be secretly exercised.

From the standpoint of the present study the important features of these criticisms are: that no adequate provision is made within the Bureau of Internal Revenue itself for a separate audit of the settlement of tax claims, such review as there is being under the direction of the chiefs of the divisions by which the settlements were made; that there is no adequate provision for a review by the Commissioner of Internal Revenue, not merely of individual cases but even of the principles adopted in applying the law; that, as the result of the failure to embody decisions affecting principles in formal rulings to which publicity is given, even the working force has no means of ensuring itself that principles applied in one case are uniformly applied in other similar cases; and, most important of all, that no means are provided by which those in superior authority, and especially Congress can learn the facts as to how this most important body of public law is being administered.

The situation that has been depicted above does not necessarily require that the only method of correcting the defects shown is by entrusting the work of review and the final passing upon claims to the General Accounting Office. The remedy may in large part be found in reorganizing the administrative system and procedure of the Bureau of Internal Revenue and in providing for a more independent review and check upon the examining

and settlement units of the service. There is, however, one essential feature which is lacking in the Customs Service which cannot be obtained in the Bureau of Internal Revenue, no matter how efficient is made the internal organization and procedure of these two services. This consists in the opportunity for an independent scrutiny of the manner in which these services perform their duties. There is now no means by which Congress can secure information regarding the work and practices of these two organizations except through resort to the cumbersome and unsatisfactory method of a special investigation, such as was conducted under great difficulties by the select committee of the Senate from the report of which quotations have been given. There may be, and probably are, grave objections to seeking to make provision for this feature by entrusting to the General Accounting Office the function of auditing and settling all customs and internal revenue claims. The law should, however, not merely authorize but impose the direct duty upon that office of maintaining a current inspection of the work of these two services and, as a part of this duty, to make "test audits" of the settlement of claims and report the results of such audits to Congress. Through this device Congress would be in a position where it would currently receive reports from its agent regarding the manner in which the revenue laws were being administered. The fact that representatives of the General Accounting Office might at any time appear in their offices, demand the production of their books, and investigate their procedure and action in particular cases to be selected by them, would constitute a strong moral check upon all collectors of customs and internal revenue. And the fact that the bureaus at Washington would be subject

to similar scrutiny of their methods and actions would stimulate them to putting their operations on a basis that would not lead to adverse criticism. At any rate Congress as the body having final responsibility and power would be in a position to know the facts in a way that is impossible except where conditions are to be examined into and reported upon by an agency which has that independent status which alone makes possible courageous and unbiased expression of opinion.

Though not relating directly to the question here under consideration, that of the auspices under which revenue claims should be audited and settled, one extremely vital defect in the existing system of administering the revenue laws should be mentioned. As is well known, the offices of collector of customs and collector of internal revenue are now purely political offices. In many if not most cases the persons filling these offices have been selected with reference to political considerations rather than their technical qualifications. It is a common practice for these officers to give comparatively little detailed attention to the conduct of their offices, the real work being performed by their subordinates. Under these conditions the need for a rigid supervision and control over the conduct of the officers is much greater than if the collectors were selected with special reference to their qualifications for the work and were members of a permanent service whose retention in office and promotion depended upon the fidelity and efficiency with which they performed their duties. One of the greatest improvements that could be made in the administration of the revenue services would be their erection into services corresponding to the Foreign Service of the State De-

partment, where entrance was provided for through some process of selection having solely in view the securing of competent men and where the service itself was made a permanent career in which promotions would take place according to demonstrated merit and officers might be freely transferred from one port to another.

CHAPTER VIII

ENFORCEMENT OF COLLECTION OF CLAIMS DUE THE GOVERNMENT

A distinction must be made between the settlement and adjustment of claims due the government and the enforcement of their collection. The great mass of payments due the government when once determined are paid by the debtors as a matter of routine. There are many claims, however, which are not paid unless special steps, often through the use of the courts, are taken to enforce their payment. Such enforcement is primarily the responsibility of the administrative officers to whom payment should be made. These officers may be negligent or perform this part of their duties with lack of energy or force; or the claims may be of a character that, unaided, they are unable to enforce payment. It is one of the essential functions of the General Accounting Office to secure information regarding such claims, to bring pressure to bear upon the collection officers to use due diligence in securing the liquidation of such claims, and, where necessary, itself to take the steps required to enforce payment. Thus the Comptroller General in his annual report for 1926 says:¹

One of the principal functions of the General Accounting Office is to supervise the recovery of debts due the United States. Until recently there was no general procedure with reference thereto, and suits against creditors were the exception, with the result that vast sums due

¹ Pp. 20-22.

to the United States have not been and will not be recovered. The machinery to correct this situation has not been entirely perfected, but to the extent within its authority the General Accounting Office is recovering and will continue to recover, or supervise the recovery of all sums due to the United States, whether arising in the settlement of claims or accounts in the General Accounting Office, or observed in connection therewith, or reported to the General Accounting Office by the several departments and establishments.

On February 7, 1923, there was established in the General Accounting Office a collection unit, charged with the recovery of all sums due to the United States, and shortly thereafter the heads of the departments and establishments were advised thereof and invited to report any debts appearing of record in their departments or establishments. The establishment of this collection unit was an important advance in the interests of the Government, and its activities have been gradually extended according to its success and the needs of the service arising on account thereof. Items disallowed in the accounts of disbursing officers or reported to the General Accounting Office as due to the United States are recorded and action is taken with a view to recovery. A concerted effort is being made all along the line, bringing pressure to bear on every department and establishment of the Government, to see not only that all sums collected are duly accounted for but also that nothing due to the Government is omitted to be collected.

During the fiscal year 1926 the collection of indebtedness to the United States through the General Accounting Office amounted to \$3,458,563.59. . . .

In addition to the \$3,458,563.59 indebtedness to the United States collected as above there remained on hand on its books on June 30, 1926, 35,366 claims of the United States, aggregating \$288,041,589.11. Although the individual amounts of the debts to the United States thus pending at the close of the fiscal year 1926 are not so large, the debtors are so numerous that with the limited

personnel available it will doubtless take years to fully adjust said 35,366 pending claims.

The procedure employed by the General Accounting Office in performing this duty of enforcing the payment of claims due the government is described by the Comptroller General in his annual report for 1923. He there states:

The procedure followed in attempting to collect moneys due the United States after administrative failure so to do, is to demand payment of the amount due on or before a certain date, the time being adjusted according to the nature of the indebtedness and the distance the debtor resides from this city. If there is no response a final demand is made advising that unless the demands of this office are complied with the matter will be referred to the Department of Justice with recommendation that legal proceedings be instituted to recover the amount due. When available means of collection have been exhausted, a transcript from the books and proceedings of this office is prepared and forwarded to the Solicitor of the Treasury for suit. If the amount be small a statement as to the nature of the indebtedness may be forwarded to the Solicitor of the Treasury with the request that it be referred to the United States attorney with the suggestion that collection be attempted without suit.

The foregoing procedure applies to claims on the part of the government against private individuals or corporations. When the claim is against an officer of the government the General Accounting Office has sought to secure an adjustment of the indebtedness, as far as circumstances permitted, through directing the proper disbursing officer to deduct the amount due from the pay or other emoluments of the officer against whom the

claim rests. When the amount of the indebtedness is large and conditions justify, the disbursing officer is instructed to make the deductions in installments so as not unduly to inconvenience the officer or interfere with the due performance of his duties.

The attempt on the part of the General Accounting Office to enforce the payment of moneys due the government from its officers in this way has been violently opposed by certain of the departments, particularly the Navy Department. With their apparent full approval, officers indebted to the government have been permitted to resort to the courts for the purpose of securing orders from those tribunals restraining the disbursing officers and the General Accounting Office from making deductions from their pay or other emoluments in this way. It would appear that the contention in these actions is not so much the validity of the claims as the right of the General Accounting Office to make use of this procedure in enforcing their payment. The officers, supported by their departments, claim that the General Accounting Office, in the absence of any specific authorization by law so to do, has no right to resort to this procedure. The position of the General Accounting Office is that its action is fully justified as a proper procedure in performing its general function of seeing that all claims due the government are liquidated.

The history of this controversy is set forth at length in the annual report of the Comptroller General for 1925.

An act of Congress^{*} provided that an officer of the Army should receive quarters in kind or commutation in lieu thereof for a "wife, child or dependent parent" when the officer maintained a place of abode for them and

^{*} Act of April 16, 1918; 40 Stat. L., 530.

was on duty in the field or without the territorial jurisdiction of the United States. Upon the matter being taken up with the Comptroller of the Treasury it was decided by that officer that a dependent parent within the meaning of the act was one to whom the officer regularly and necessarily contributed more than half of a reasonable living.* The method of determining this fact was by the execution by the claiming officer of a certificate that the facts corresponded to the rule laid down by the Comptroller of the Treasury and acquiesced in by the War Department. The number of claims for commutation of quarters under this act became so numerous that the suspicions of the General Accounting Office were aroused in regard to the justice of the claims and the veracity of the certificates that were made in support of them. To quote from the annual report of the Comptroller General for 1925:†

This office concluded in the audit that on the basis of general financial conditions in the United States and the class from which Army and Navy officers usually are appointed that something was wrong, for there were entirely too many officers certifying that their mothers were in fact dependent upon them for their chief support. Accordingly, forms of affidavits were devised to be executed by the alleged dependent mother and verified by two other persons having knowledge of the matters averred, giving the facts of the alleged dependency of the mothers on the officer sons. These affidavits disclosed conditions which related back to the period beginning April 16, 1918, and showed that some of the officers had certified that they maintained a place of abode for their mothers and contributed regularly and necessarily more than half of a reasonable living to their support, and had

* 4 Comp. Doc. 681.

† Pp. 8-9.

certified subsequent to July 1, 1922, that they were in fact the chief support of their mothers when the father was living and gainfully employed, when the parents owned their own home, and had investments from a few hundred to many thousands of dollars, or the mothers resided with other children, etc. . . .

When the affidavits showed that many officers had certified to facts which did not exist and had obtained moneys from the United States Treasury to which they were not entitled this office audited their accounts for the period subsequent to April 16, 1918, and charged them with the payments which they had wrongfully claimed and erroneously received on behalf of their parents. The officers were then requested to pay into the Treasury the amounts with which they were respectively debited; many complied mainly through installment refunds, and upon the refusal by the others to do so instructions were issued to the disbursing officers carrying their accounts to withhold sufficient sums from the accruing current pay of such officers to balance their accounts.

The disbursing officers commenced to obey their instructions, and thereupon one Lieutenant Dillon, of the Navy, filed a petition in the United States District Court for the Southern District of Florida for a writ of mandamus against Lieutenant House, the disbursing officer carrying his accounts, to compel him to pay the sums theretofore withheld from his pay and to refrain from withholding further sums from his pay notwithstanding the indebtedness to the United States. The court granted the writ in the case reported as *Dillon v. Gross*, 299 Fed. Rep. 851. A similar writ was granted by the United States District Court for the Northern District of Florida in *Howe v. Elliott*, 300 Fed. Rep. 243, when the officer was charged by this office with \$12,879.98 which sentence of a Navy court-martial approved by the Secretary of the Navy had convicted him of embezzling and for which an acting Secretary of the Navy had subsequently attempted to secure credit by certifying under the act of July 11, 1919, 41 Stat. 132, that the officer had lost said

sum in the line of duty and without fault or negligence, but this office decided in 1 Comp. Gen. 536, that the approved sentence of a naval court martial finding the officer guilty of embezzling the public funds could not be subsequently set aside or nullified by such certificate.

Numerous other cases are cited by the Comptroller General presented in other courts which for the most part were decided in favor of the plaintiff and against the Comptroller General. He also mentions that approximately seventy-five other officers had filed similar petitions in the Supreme Court of the District of Columbia.

It need hardly be said that the Comptroller General holds the opinion that the courts were in error in taking the position that they have in these cases. In the first place, it is his contention that the courts were wrong in assuming jurisdiction, or, at least, in causing to issue mandatory writs directed to disbursing officers and the Comptroller General. He believes that it is the intention of Congress that control over matters of accounting should be finally vested in the General Accounting Office and any appeal from its determinations should be to Congress and not to the courts. He, furthermore, holds that there is ample warrant of law for satisfying government claims against government employees by the method of deductions from pay as employed by him.

It would serve no useful purpose to attempt here to argue this contention or seek to reach an opinion on which of the two practices were, from a legal standpoint, in the right. The point of real importance is whether it is desirable that the Comptroller General should have the power which is asserted by him of enforcing payments due the government by officers of the government through this method of making deductions from pay,

and if this authority is desirable, the best means by which it may be confirmed. In respect to the first half of this question, there can be little doubt that the answer should be in the affirmative. This being so, two methods of securing this right are open: the one to have an appeal, as in one or more of the cases that have been cited, taken to the Supreme Court of the United States; the other to secure legislation that will definitely establish this right. The Comptroller General has asserted in his annual report for 1925 * that he believed that his position in the matter would be sustained if the question involved could be squarely presented to the Supreme Court. He accordingly strongly urged that an appeal to that body be made from the decisions of the lower courts in these cases. This the Department of Justice has refused or neglected to do within the time prescribed for perfecting an appeal. In one case, as has elsewhere been stated, the Department of Justice acquiesced in filing a petition for a writ of certiorari, but in doing so filed an independent statement that in its opinion the decisions of the lower court were correct. The result of this action, as might be expected, was that the petition was denied.

It would appear, therefore, that the only recourse on the part of the General Accounting Office is that of securing legislation from Congress.

* P. 10.

CHAPTER IX

ACCOUNTING AND REPORTING

The General Accounting Office, as its name implies, is intended to be the central accounting authority of the government. This in two senses: as the office in which shall be kept the general or controlling accounts for the government as a whole, and as the one which shall prescribe and supervise the system of accounts and reports of other financial officers. In respect to both of these functions a further distinction has to be made: that between the relationship of the General Accounting Office to the financial officers of the spending services, strictly speaking, and to the financial officers of the Treasury Department. In respect to the former class of officers there is little doubt regarding the scope of the authority of the General Accounting Office. In respect to the latter there is room for much difference of opinion, both from the standpoint of law and desirability, as to the character of the accounts that should be kept in these two central offices—the General Accounting Office and the Department of the Treasury—and the authority of the first named office to prescribe and control the accounting and reporting system of the latter. An attempt to give an account of the accounting and reporting function of the General Accounting Office must keep these distinctions in mind. This is done in the consideration that follows. For purposes of clearness it is desirable to begin with description of the work of the General Accounting Office in the way of prescribing the accounting

and reporting system of the operative services, using that term as one excluding the financial officers proper of the Department of the Treasury.

As pointed out by the writer in his preface to a volume recently published by the Institute for Government Research,¹ the problem of devising and installing a satisfactory system of accounting and reporting for an organization such as the national government, made up, as it is, of a large number of separate operating units, embraces the two distinct tasks of determining the character of the accounts that shall be kept and the reports that shall be rendered by the accounting officers of the several operating units, and the character of the accounts that shall be kept in central offices of accounts, such as the General Accounting Office and the Treasury Department, and the character of the reports that shall emanate from those offices.

The law is direct and specific that it is the duty of the General Accounting Office to prescribe the accounting and reporting system of the first class of units. Section 309 of the Budget and Accounting Act, 1921,² thus provides that:

The Comptroller General shall prescribe the forms, systems, and procedure for administrative appropriation and fund accounting in the several departments and establishments, and for the administrative examination of fiscal officers' accounts and claims against the United States.

Although a very similar provision (Sec. 5) was contained in the Dockery Act of July 31, 1894,³ that:

¹ H. P. Seidemann: *Manual of Accounting and Reporting for the Operating Services of the National Government* (1926), *Studies in Administration*.

² 42 Stat. L., 20, 25.

³ 28 Stat. L., 162, 206.

The Comptroller of the Treasury shall, under the direction of the Secretary of the Treasury, prescribe the forms of keeping and rendering all public accounts except those relating to the postal revenues and expenditures therefrom.

practically no effort had been made by that officer or the Secretary of the Treasury to use such power with a view to improving or rendering more uniform the accounting and reporting system of the operating services.

Largely as a result of the failure of these officers to exercise the powers thus conferred upon them, hardly an approach had been made by the spending services to the establishment and operation of any proper system of accounts and reports. Even when here and there efforts had been made in this direction by particular services, each had acted on its own initiative and without reference to the system being maintained by other services. There was thus complete lack of uniformity in handling this important feature of public administration, and only in exceptional cases was the system one at all conforming to approved principles of public accounting. The system, or lack of system, existing at the time of the creation of the General Accounting Office was characterized by the Comptroller General in the following way:⁴

It was recognized [while the Budget and Accounting Act was under consideration] that while an establishment here or there had a reasonably satisfactory system for its own purposes there was no such system for the whole Government, such as a business organization requires in order to properly control its activities and record the results of operations from month to month and year to year. The officially established accounting system of

⁴ Annual Report, 1923, pp. 27-28.

the United States was intended almost solely to insure the fidelity of the officers and employees charged with receipt and disbursement of public funds. . . .

The present accounting system of the United States involves little more than a recording of receipts and expenditures with an audit of certain receipts and not all expenditures. One of the prime objects of the accounting system of a well-organized modern business concern is to make of easy access information in such forms as will enable those in charge to visualize the functioning of the organization as a whole and by units, and to determine whether the greatest possible efficiency and economy result from expenditures made. This element is totally lacking in our present accounting system. While for many reasons a purely commercial system of accounting would not suffice, it is obvious that many of the elements of such a system could be adopted to fine advantage, resulting in better and more readily available information for the Congress and a more efficient and businesslike control of appropriated funds in the administrative offices.

Almost immediately after its creation the General Accounting Office entered upon a study of the problem of devising a standard system of accounting and reporting for the operating services. It is now generally recognized that such a system should embrace at least the following features:

(1) The accounts should be kept on what is known as the accrual basis; that is, they must record items of income as they accrue and items of obligations as they are incurred. In this way only can those responsible for the conduct of the operating services or for exercising superior authority over them know at all times the real financial condition of such services.

(2) Provision must be made for what are known as proprietary accounts; that is, accounts which will furnish

information regarding the services as a proprietor or institution, what it owns and owes, and the character of such assets and liabilities.

(3) In recording such assets and liabilities the distinction should be made between those which are "current" and thus available for meeting current needs or which must be met out of current income and those which are "fixed" and are thus not currently available and which need not be currently met.

(4) Provision must be made for maintaining fund and appropriation distinctions in the accounts; that is, a separate account must be set up with each fund administered by the service and each appropriation head under which money is voted to it for expenditure. In this way only can assurance be had that fund and appropriation limitations are being observed.

(5) Provision should also be made for what are known as allotment accounts. If the money voted by Congress or accruing to the funds administered by the service is to be efficiently spent and deficiencies are to be avoided, the service should, at the beginning of each fiscal year, carefully formulate a work program and allot the total of the funds available to the various projects or categories of work figuring in such program. By opening up an account with each such allotment, the head of the service and his superior officers can at all times determine how affairs are going from a financial standpoint, and, if expenditures are running beyond expectations, corrective action can be taken.

(6) Provision should be made for recording all receipts and expenditures in such a way as to show their character; that is, whether they represent income or expenditure properly speaking or a mere conversion of

assets from one form to another, transfers from one head to another, and the like. This information is furnished by distinguishing between what are known as "revenue" and "non-revenue" receipts and between what are known as "expense" and "capital outlay."

(7) Finally, provision should be made for distinguishing expenditures according to the units of organization to which they appertain and the objects for which made; that is, the thing purchased, whether personal service or supplies or materials of one kind or another.

Only as these requirements are met is it possible to secure the information that is needed regarding the financial condition and operations of the services, not only for the current control of affairs but as a basis for estimating future needs. If they are met, statements can be prepared showing, in the form of a balance sheet, the financial condition of the service with its assets and liabilities properly classified, and, in the form of an operating statement and subsidiary statements the financial operations of the period so presented as to show receipts according to character and sources from which derived, and expenditures classified according to appropriation heads, activities, organization units, and objects, and throughout all these a segregation of items according to funds.*

The General Accounting Office, after careful study of the subject, worked out a plan of accounting and reporting corresponding to the principles that have been just set forth, and in 1923 entered upon its installation.

*For a detailed consideration of the problem of public accounting and reporting see publications of the Institute for Government Research: Francis Oakey, *Principles of Government Accounting and Reporting* (1921), H. P. Seidemann, *Manual of Accounting and Reporting for the Operating Services of the National Government* (1926), and *Draft Manual of Reporting Financial Data of the States* (1926).

The Comptroller General reported, in his annual report for 1926,⁶ that up to June 30, 1926, installation had been made in twenty-nine units. The work has to proceed gradually, since the new system cannot be put into a service until a careful study has been made of its situation and needs and especially an analysis of its activities in order that the system will permit of a classification of expenditures according to such activities.

One feature of the new system was, however, immediately made generally obligatory. On May 11, 1922, an order was issued⁷ prescribing that all the departments and establishments should keep an account of their expenditures classified according to objects as set forth in the order. This requirement not only makes it possible to compare the expenditures of the several services from this standpoint, but also to prepare aggregates for all the departments and establishments that permit of an analysis of the total of all government expenditures from this point of view. One of the most important statements contained in the Budget is one showing the total of government expenditures in this way. This classification, moreover, has proved of great use in setting forth the details of the estimates of appropriations as formulated by the spending services and as included in the Budget document. Practically every appropriation head is supported by a statement conforming to this standard classification having for its purpose to support such item. It has thus been a means of standardizing the form of presentation of budget details.

One of the great advantages of standardizing the accounting system of the operating services is that it

⁶ P. 41.

⁷ Classification of Objects of Expenditure for Departments and Establishments of the Government of the United States, Bulletin No. 1.

makes possible a corresponding standardization of accounting forms. The General Accounting Office has given this matter special attention and has prepared and prescribed the use of such forms. Another advantage that developed in the course of devising and installing the new system was the great economy and increased efficiency that could be secured through the use of typewriter machines specially devised for handling accounting work. The General Accounting Office accordingly devised its standard forms with reference to their use in connection with such machines. Regarding this standardization of forms and use of accounting machines the Comptroller General has the following to say in his latest annual report: *

In the light of the experience of the preceding year the standardization of forms for the uniform accounting system was undertaken and 12 standard forms approved for use, with 4 types of bookkeeping machines. These forms have been so designed that the special features of the different machines are utilized in the preparation of the records, yet the information obtained for report purposes is the same and the number of forms required reduced to the minimum. The standardization will result in a great saving in the printing and binding bills of the department and establishment using the system, as these 12 plates will replace many times that number required under the old practice of permitting each administrative office to design and print the forms required for its particular use.

While the uniform accounting system may be operated by the pen and ink method the office has advocated the use of modern office appliances, as it believes the records obtained on the various bookkeeping machines, which may be purchased at a reasonable price, present the in-

* Annual Report, 1926, p. 42.

formation in superior form and have a great advantage over the pen and ink method of presenting the status of accounts from day to day. A machine installation properly managed is operated at small cost—the posting to records and the preparation of statements being done by personnel of lower salary grade, and the former bookkeeper, relieved of the drudgery of the old method, supervising the work and becoming of more value to the office than before by reason of the opportunity to utilize his experience. A description of the system and the forms to be used is now in course of preparation.

The work of the General Accounting Office in the way of standardizing accounting forms and procedure has not, it should be stated, been limited to action in this way in respect to the uniform accounting system. It has prepared a large number of standardized forms for general use throughout the departments, especially in connection with the performance of duties with which it is directly concerned, such as those having to do with the making of requisitions for funds, the rendering of accounts, etc.; and in other ways it has used its powers to unify and improve methods of accounting procedure throughout the government.

Though much has been, and still can be done in the way of improving this important branch of public administration by the General Accounting Office working under existing provisions of law, additional legislation will be required if conditions are to be made thoroughly satisfactory. Especially should important changes be made in the existing system of appropriating money and in financing of revenue-producing and supply services. The changes needed in this way are indicated by the writer in his recent volume on "The National Budget System with Suggestions for Its Improvement." It is

appropriate, however, to reproduce here the remarks of the Comptroller General on this subject. He says:*

It has been more completely demonstrated during the year that certain fundamental changes in the laws relating to appropriations and accounting must be made before a satisfactory accounting system, economical in administration, can be established. The following conclusions in regard to this subject can, it is believed, be fully supported:

(a) A satisfactory accounting system for the United States requires revision of appropriation methods and the establishment of a control of the use of appropriations.

(b) The activities of the governmental establishments should be analyzed and the expenditures carefully classified, and the appropriation therefor should be for comparatively large lump sums with such limitations as to the uses thereof as Congress may deem necessary. Such limitations should conform so far as practicable to the classification previously determined upon and should be enforced by means of a simple method of accounting and reporting.

(c) Annual appropriations should cover the actual expenses to be incurred during each year—that is, they should include the amount required to pay for personal and other services and the value of material and supplies used, and should not be so made as to place a premium on the incurring of obligations and the purchase of large stocks of materials and supplies near the close of the fiscal year.

(d) Industrial establishments operated by the Government should be provided with a working capital sufficient to carry on their authorized business, and the cost of work done should then be charged to the proper expense account.

(e) Accounts should be opened on the books of the General Accounting Office for materials and supplies purchased for issue and for the amounts of accounts

* Annual Report, 1925, pp. 11-12.

receivable and other current assets, which accounts should be coordinated with the cash accounts.

(f) The well-defined distinction between funds should be recognized and public funds required for expenditure should be kept separate from trust funds, as indicated below:

Authority to make refundments of excess or erroneous collections should not be confused with appropriations to pay expenses, and moneys received from the sale of capital items such as lands, buildings, ships and equipment, or from negotiable securities or in the payment of foreign loans, etc., which should not be accounted for in the same category with ordinary receipts.

Appropriations from local revenues should not be treated as part of the appropriations from the general revenues of the United States nor should the local revenues collected be taken in as a part of the miscellaneous receipts of the United States. Only the amount of the appropriation that is paid out of the General revenues of the United States should be considered as an expenditure from the general funds of the United States.

The establishment of a proper accounting and reporting system for the operating services constitutes, as has been pointed out, but a part of the task of providing the national government with the means of securing the information that it must have regarding its financial condition and operations if it is to conduct its affairs efficiently and intelligently plan for the future. To supplement the accounting systems of the operating services there is further needed a central accounting system that will assemble and make known the financial facts regarding the government as a whole and serve as an agency for controlling the accounting system of the subordinate units.

If conditions prior to the establishment of the General Accounting Office were unsatisfactory in respect to the

character of the accounts kept by the operating services, they were still more so in respect to the character of the accounts that were kept for the government as a whole and the nature of the reports that were rendered on the basis of those accounts. None of the fundamental accounting distinctions that have been mentioned, such as those between revenue and non-revenue receipts, between expense and capital outlay, or between current and fixed assets and liabilities, were made. Accounts were on the primitive cash instead of accrual basis. There were no proprietary accounts. Fund distinctions even as between public and private trust funds, though necessarily made on the books, were largely ignored in preparing financial statements. There was no statement to perform the functions of a balance sheet and make known the real financial condition of the government at the close of the fiscal year or at any other date. In no place could one secure in any detail a complete showing of the government's income so as to determine the sources from which it was derived. There was no consistency in reporting the financial operations of revenue-producing enterprises: In some cases they were on a basis of gross and in others on a basis of net receipts and expenditures. No attempt was made to analyze expenditures from the standpoint of funds, organization units, functions, activities, character, or objects. If the government invested, as it did, some hundreds of millions of dollars in railroad or farm loan bank bonds, the disbursement was treated as an expenditure precisely as if it had been expended for salaries, wages, or any other purpose. If it sold these securities the receipt was treated as income precisely as if it had been derived from taxes. We know from a statement of the Undersecretary of the Treasury that the bonded in-

important duties than that of taking the steps that would lead to its correction. In taking action in this way, it has two problems to meet: One, the determination of the character of the central accounts to be kept and rendered; and, two, the agency of the government that should be entrusted with the duty of keeping and rendering such accounts.

This is not the place in which to enter upon any detailed consideration of the accounting and reporting system that should be set up. This is a task, moreover, which the Institute is seeking to perform in a volume now in process of preparation which will be published shortly under the title of "Manual of Central Accounting and Reporting for the National Government." A few words regarding certain essential features of this system will not, however, be out of place.

In the first place the system should provide for all of the accounting distinctions that have been prescribed by the General Accounting Office in the uniform accounting system for the operating services that is now being installed under the direction of the General Accounting Office. Revenues must be clearly segregated from non-revenue receipts and expense from capital outlay disbursements. Provision must be made for keeping the accounts on an accrual instead of a cash basis and for the maintenance of proprietary accounts. Fund distinctions must be observed not only in the keeping of the accounts, but also in the preparation and publication of accounting statements. One of the most important features of the new system should be the complete segregation of the accounts of all revenue-producing enterprises, such as the postal service, the Panama Canal, the Alaskan Railway, and the Inland Waterways Corporation from

the general accounts of the government, the latter to include only the net results of the operation of those enterprises in the form of a surplus or a deficit. This can be secured by providing for the financing of these enterprises through the device of revolving funds. The same device should be employed, as it is at the present time in certain cases, in the financing of supply services. Another important feature is the working out of a scientific classification of receipts, so that detail, as well as summary, statements can be prepared showing the total income of the government classified according to the sources from which such income is derived. No such statement is now available. If one wishes to know in detail the sources from which the total of internal revenue is derived, he must now have recourse to the administrative reports of the Commissioner of Internal Revenue and the figures he there finds will not agree with the general statements given by the Secretary of the Treasury, since they represent collections by the collectors of internal revenue instead of moneys covered into the Treasury. In the same way if one desires the details regarding customs revenues he must refer to the statistical reports of the Bureau of Foreign and Domestic Commerce of the Department of Commerce and the figures there found, being based on unliquidated entries, give only an approximation of customs collections and are out of adjustment as regards their total with the figures given by the Secretary of the Treasury in his annual report. Though the national government receives a large income in the way of payment for products sold or services rendered by its various services, there is now no means by which its receipts in this way can be accurately determined. In the general accounts and statements they figure with other sources of income simply as miscellaneous receipts.

Finally, the system should provide for a general financial report in which will be set forth all of the facts regarding the financial condition and operations of the government to which it is desirable that publicity shall be given. It is a remarkable fact that no such report is now prepared and published by the government. Such information as is now published is to be found scattered through a number of different reports, the annual administrative report of the Secretary of the Treasury; the annual report of the Treasurer of the United States; the Combined Statement of the Receipts and Disbursements, Balances, etc., of the United States, prepared annually by the Division of Bookkeeping and Warrants of the Treasury Department; and Part I of the Budget, prepared by the Bureau of the Budget. For details one must refer to the administrative reports of the operating services. Under this system it is not only difficult to secure particular information desired, but the figures given in these several reports are not in adjustment, since they are prepared on different bases and with varying purposes in view.

There would seem to be no question that it is a part of the duties of the General Accounting Office to consider the defects in the existing central accounting system, to devise a system that will correct these defects, and to take the necessary steps to have this revised system put into effect. In the Section 309 of the Budget and Accounting Act, 1921, already quoted, it is provided that:

The Comptroller General shall prescribe the forms, systems, and procedures for administrative appropriation and fund accounting in the several departments and establishments.

Section 5 of the Dockery Act, 1894, expresses this power still more comprehensively, since it provides that:

The Comptroller of the Treasury shall, under the direction of the Secretary of the Treasury, prescribe the forms of keeping and rendering all public accounts except those relating to the postal revenues and expenditures therefrom.

The Comptroller General falls heir to this power, and this without the qualification that it is to be exercised subject to the direction of the Secretary of the Treasury, in virtue of the provision of Section 304 of the Budget and Accounting Act⁴² that:

All powers and duties now conferred or imposed by law upon the Comptroller of the Treasury or the six auditors of the Treasury Department, and the duties of the Division of Bookkeeping and Warrants of the Office of the Secretary of the Treasury relating to keeping the personal ledger accounts of disbursing and collecting officers, shall, so far as not inconsistent with this Act, be vested in and imposed upon the General Accounting Office and be exercised without direction from any other officer.

Care has been taken to quote these provisions of law, since the public and government officers as well have so long been accustomed to look to the Treasury Department as the chief accounting authority of the government that the question may present itself as to whether the Comptroller General has the same authority in respect to the prescription of treasury accounts that he has in respect to the accounts to be maintained by the operating services, strictly speaking. Both as a matter of

⁴² Stat. L., 20, 24.

law and as a logical assignment of duties, it would appear that he has such authority. In exercising this authority, it is desirable, however, that the whole matter of prescribing a new system of central accounts, affecting as that system will the character of the accounts to be kept in the Treasury Department, shall be taken up with the Secretary of the Treasury and an agreement, as far as possible, be reached with that officer in respect to the changes to be made.

The character of the new system of central accounts having been determined, there remains for decision the office in which such accounts shall be kept, and, as a consequence, the office from which should emanate the annual financial report for the government as a whole and other financial statements.

At the present time the central or general accounts of the government are kept in three offices: the General Accounting Office, the Division of Bookkeeping and Warrants of the Office of the Secretary of the Treasury, and the Office of the Treasurer of the United States.

The accounts kept in the General Accounting Office are of two kinds: revenue and appropriation accounts and disbursing and collecting officers' accounts. Since it is a prime function of the General Accounting Office to control treasury receipts and issues, it is essential that that office shall maintain books of accounts recording all such receipts and issues. As the issues may be made only in pursuance of appropriations, an account is opened in what is known as the Appropriation ledger with each appropriation head, and as moneys are authorized to issue from the treasury through the execution of warrants, the appropriate account in this ledger is charged. These accounts are thus essentially accounts of treasury

receipts and issues. The disbursing and collecting officers' accounts are fidelity accounts. They have for their purpose to record all moneys coming into the hands of those officers and to insure that a due accounting is had for the moneys thus coming into their possession.

The accounts kept by the Division of Bookkeeping and Warrants of the Office of the Secretary of the Treasury are of three kinds: accounts of treasury receipts and issues corresponding to those kept in the General Accounting Office, income accounts, and fund accounts. So long as the Secretary of the Treasury has to sign treasury warrants, it is imperative that he shall keep an account that will record all warrants signed by him, and in order that he may assure himself that no settlement or accountable warrant is signed by him that is not authorized by law, he must keep, as a feature of his treasury receipts and issues account, an Appropriation ledger corresponding to that kept in the General Accounting Office. From information contained on the covering warrants or submitted in connection therewith, the Division keeps an account of the moneys covered into the treasury according to sources from which such income is derived and the organization units making the collection and tendering the money for covering into the treasury. In financing the government, use is made of a number of different funds. There is, first, the distinction between public funds and private trust funds. In respect to public funds there is a further distinction between what is known as the general fund and special funds, such, for example, as the Postal Fund, the Reclamation Fund, the Civil Service Retirement and Disability Fund, etc. The accounts with these several funds is kept in the Division of Bookkeeping and Warrants.

The accounts kept in the Office of the Treasurer of the United States are purely fidelity accounts. They have for their purpose merely to record the cash and securities entrusted to the custody of the Treasurer and the disbursement of this cash or surrender of the securities. Since use is made of the banks as depositaries of public funds, an account must be kept in this office with each depositary. With the sources from which cash deposited with him is derived, or the purposes for which disbursements are made, the Treasurer has no concern. In this respect his functions are merely those of tellers in a bank.

From the reporting standpoint the General Accounting Office now issues no financial statements or reports having for their purpose to make known the financial condition and operations of the government. The Secretary of the Treasury issues no annual financial report as such. His annual administrative report contains, however, numerous tables showing the receipts and expenditures of the government, the condition of and operations in respect to the public debt, etc., the data for which are obtained from his Division of Bookkeeping and Warrants and the Treasurer of the United States. The information regarding receipts and disbursements is on the warrant basis; that is, it consists of figures showing treasury receipts and issues. The Division of Bookkeeping and Warrants, acting for the Secretary of the Treasury, issues not merely a daily statement showing the receipts and issues from the treasury during the day to which it relates and the cash balance in the treasury at the end of the day, and a monthly statement of the condition of the public debt, but also an annual financial report entitled "Combined Statement of the Receipts and Disbursements, Balances, etc., of the United States.

This report represents the nearest approach that the national government has to an annual general financial report. It gives in considerable detail the receipts of the government as represented by money covered into the treasury, classified by organization units and sources, and disbursements as represented by pay warrants classified by organization units. It, furthermore, gives the status of appropriations by showing the amounts expended under the several appropriation heads and the balance unexpended and available for future expenditure. The Treasurer of the United States issues an annual report, which is published in connection with the annual administrative report of the Secretary of the Treasury, and separately, giving data which is of little importance except from the most general standpoint.

Mention should finally be made of the financial data contained in the annual Budget prepared by the Bureau of the Budget, which is submitted by the President to Congress on its convening in regular session in December. The data contained in this report are not original data, since the Bureau of the Budget is not an accounting office. The statements presented represent compilations from data recorded in the other offices and are of value as representing analyses of such data and their presentation in connection with estimates for the authorizing of further expenditures.

The inadequacy of the present scheme of central accounts and reports and the duty of the General Accounting Office to devise a new system that is adequate, has been pointed out. The present system of organization for the handling of central accounting matters is equally unsatisfactory. The fundamental defect is the absence of one central accounting office in which all of the central

accounts, except those which are of a purely fidelity character, shall be kept and from which shall emanate the general financial statements and reports showing the financial condition and operations of the government as a whole. Second to this, but none the less important, is the unnecessary duplication of accounting work that takes place under the existing system.

These defects can and, it is believed, should be corrected by making the General Accounting Office, in fact as well as in name, the general or central accounting office of the government. To state this in another way, the General Accounting Office, having worked out a new system of central accounting, should itself assume the duty of keeping the accounts called for by such system and of preparing and rendering reports having for their purpose to make known the facts developed by such accounts. If this is done a substantial saving can be accomplished by lessening the work done by the other accounting offices that have been mentioned.

It has been pointed out that both the General Accounting Office and the Division of Bookkeeping and Warrants now keep what are, in effect, duplicate books of treasury receipts and issues, and as a part of that work maintain an Appropriation ledger in which an account is opened with each of the several thousand heads under which appropriations are granted. In the opinion of the writer it is questionable whether the requirement that all treasury warrants shall bear the signature of the Secretary of the Treasury as well as the Comptroller General serves any useful purpose. If this requirement is done away with, the need for the keeping of an account of treasury receipts and issues and an Appropriation ledger in the office of the Secretary of the Treasury disappears. The

abolition of this requirement would, however, represent a departure from a practice that has obtained since the foundation of the government, and it is unlikely that Congress will be willing to do away with this additional check upon the issue of money from the treasury. If it is assumed that this requirement is preserved, there is nevertheless room for a great reduction in the duplication of work that now takes place in respect to the keeping of the appropriation ledger. The General Accounting Office, as an essential feature of its control function, is required to keep this account by detail appropriation heads. There is no necessity that the Secretary of the Treasury should do so. It will suffice if he keeps the accounts under a comparatively few heads, as, for example, heads showing all appropriations for the use of each of the several executive departments and establishments, or, if that is not deemed adequate, for each of the bureaus or major units within the departments. The adoption of this policy would greatly decrease the work of the Division of Bookkeeping and Warrants and permit of a corresponding reduction in personnel and work. That it is within the authority of the Secretary of the Treasury to make this change, is evidenced by the fact that the Division of Bookkeeping and Warrants at the present time does not keep its Appropriation ledger by detail appropriation heads, but in a number of cases maintains a single account with a number of appropriation heads lumped together. All that is required is that this practice shall be given its logical extension.

The account of receipts by sources and organization units and the fund accounts now being maintained by the Division of Bookkeeping and Warrants, should be discontinued by that organization and should become a

part of the accounting work of the General Accounting Office. The latter organization now receives the original documents in the form of certificates of deposit and warrants and is in as good if not a better position to do this work than the Division of Bookkeeping and Warrants. With this transfer will go the publication of the daily statement and the annual Combined Statement of Receipts, Disbursements, Balances, etc. In improved form, the information contained in the latter report should be included in the annual report on the finances of the government that should be issued by the General Accounting Office.

It is a matter of no little interest to note that the last Comptroller of the Treasury prior to the abolition of his office, in recommending the creation of a General Accounting Office, urged that that office should be made the central accounting office. In his annual report for 1920 he devoted considerable space to his recommendation for the creation of a General Accounting Office and even went so far as to outline the internal organization of such an office. Among the divisions for which he argued that provision should be made was a Division of Bookkeeping, the duties of which he stated should be as follows:

The bookkeeping department would be a department of record, taking over those duties of the Division of Bookkeeping and Warrants relating to the ledger accounts of disbursing and collecting officers and the present record duties of the Comptroller of the Treasury connected with countersigning Treasury warrants. It would keep such other book records of public receipts, appropriations, balances and settlements of audited accounts as may be required by law or the needs of the general accounting office. The bookkeeping department

should be a department of record and reference for all fiscal operations with which the general accounting office is primarily concerned, and in addition should be ready to install the necessary records and work out for permanent or temporary use any result concerning fiscal operations which may be required for the purposes of the comptroller general, the general auditor, or the chief of the inspection department. Its field should be that of a record, accounting, and financial department with neither administrative nor legal functions.

The accounts kept by the Treasurer are, as have been stated, primarily of a fidelity character. These he must necessarily continue to keep. If he keeps other accounts that do not relate to his duties of custodian of public funds, they should be discontinued and, as far as it is desirable that they should be kept, they should be transferred to the General Accounting Office.

If the changes here suggested are made, the Treasury Department will cease to be the general accounting office, the only accounts being kept in it being the summary Appropriation ledger, maintained as a feature of the requirement of the signature of the Secretary of the Treasury on treasury warrants, the fidelity accounts of the Treasurer, and those special accounts or records required in connection with the administration of the public debt. The General Accounting Office will then have the function of keeping all the general control accounts, as it now does, showing treasury receipts and issues, the Appropriation ledger, showing in detail appropriations made and expenditures or advances to disbursing officers on account of such appropriations. In addition, it will maintain an account of receipts, classified by organization units and by sources, according to a scheme of classification to be worked out by it, the data

for which it will obtain from certificates of deposit, covering warrants, or special returns to be required by it, and accounts of expenditures classified by organization units, activities, character, and objects, the data for which will be secured from the spending services through a system of reports to be prescribed by it. Until the standard accounting system for the operating services is completely installed, these reports will have to be in summary form. With that system generally in force, it will be a matter of comparative ease to secure all the data needed to make a complete showing and analysis of financial conditions and operations. The position will then be reached where a single office can prepare and issue an annual report on the financial affairs of the government that is now one of the great needs in the financial system of the government.

In connection with the establishment of this new system a careful study should be made of existing requirements of law in respect to the rendering of reports to Congress of expenditures for particular purposes or objects. At the present time there are on the statute books numerous laws requiring the spending services to transmit to Congress special reports showing their expenditures for such things as travel, purchase of typewriters, rent, etc. These laws were enacted prior to the passage of the Budget and Accounting Act, when the government did not have in the Bureau of the Budget an agency that could inquire into the desirability of expenditures. The compilation of the data and the preparation of these reports calls for a large expenditure of time and money. It is questionable whether they now serve any useful purpose. If the information furnished by them is needed, a better method of securing it would be

to have the General Accounting Office require its production as a part of the regular accounting system prescribed by it, or through the rendition to it of special reports. The information could then go forward to Congress in the form of a report of the Comptroller General, in which the data would be properly compiled and such comments made on the showing as that officer deemed called for by the facts thus made known. There can be little question that a substantial economy can be effected in this way and the objects aimed at by existing law more effectively attained.

CHAPTER X

CONTROL OF CONTRACTING

In the settlement and adjustment of claims against the government, it is the duty of the General Accounting Office to satisfy itself not only that the payment made or proposed is in accordance with the terms of the contract calling for such payment, but also that all legal requirements were observed in entering into such contracts. There are on the statute books numerous laws prescribing requirements, such as advertising for competitive bids, the acceptance of the most favorable offer, etc., which must be observed by government officers in entering into contractual relations with private individuals or concerns.

It would appear from the annual report of the Comptroller General for 1926 that these provisions of law are constantly disregarded, and that, under existing conditions, his office is unable to prevent or correct such infractions. Speaking of the provision of law calling for the advertisement for bids and the filing of copies of contracts in the Returns Office of the Department of the Interior, he says:¹

These violations are constantly encountered in the audit and are the occasion of numerous decisions. While contracts entered into in violation of their provisions are illegal as express contracts, yet, nevertheless, when performed, the party furnishing the supplies or performing the service is entitled to be paid therefor under an

¹ P. 13.

implied contract on a *quantum valebat* or *quantum meruit* basis, and as the terms of such illegal contracts are usually the best evidence of the value to be paid for the supplies or services received it in effect amounts to a payment by the United States for the supplies or services of the same amount as would have been paid had the contract in fact been entered into in conformity with such statutes, instead of in contravention thereof; or, in other words, to an indirect carrying out of the contracts as made for payment purposes, notwithstanding their nonconformity with such statutes and consequent illegality.

Other violations of law mentioned by the Comptroller General are: the inserting in proposals for bids of certain requirements which can be met by only one firm, such as a particular fender that is to be found on only one make of automobile, the failure to get the written authority of the head of the department in inserting in newspapers advertisement for bids, and the employment of accountants or other experts in inaugurating new or changing old methods of transacting business.

Responsibility for this condition of affairs is largely to be found in the unsatisfactory character of the law now governing government contracting. This law is scattered through the permanent statutes and its provisions are often conflicting, or at least exceedingly difficult of application. Much of it was enacted to meet particular abuses or to meet conditions that have now passed away. The situation from an administrative and control standpoint is further complicated by the wide diffusion of responsibility for entering into contracts for the purchase of supplies. The provision calling for the filing of copies of contracts in a so-called Returns Office of the Department of the Interior was enacted at the

time of the Civil War and now serves absolutely no purpose. The improvement of this situation is, therefore, primarily to be found in a thorough revision of the law governing government contracts, the devising and adopting of standard contract forms and other purchasing documents, and the concentration in a fewer number of agencies of the function of purchasing and supply of material required by the government services.

As has been pointed out by the author in his volume "The National Budget System: With Suggestions for Its Improvement," the Bureau of the Budget has done an exceedingly important work in this field. With the assistance of the Bureau of Standards it has had drafted and promulgated numerous standard specifications covering the more important articles purchased by the government services. With the assistance of the General Accounting Office and representatives from the spending services, it has prepared a general contracting law which will take the place of the many unsatisfactory, inconsistent, and unworkable provisions of law now on the statute books. And in this proposed law it has gone a long way towards perfecting and centralizing the machinery for contracting for supplies, financing such purchases, and setting up a proper control over the custody and issue of the supplies required. If Congress can be persuaded to enact this measure, a great improvement will be effected in handling this feature of administration and the work of the General Accounting Office will be correspondingly facilitated. It is in this way, rather than in any change in the power, duties, or procedure of the General Accounting Office, that a correction of existing unsatisfactory conditions is to be sought.

CHAPTER XI

NEED FOR A CONGRESSIONAL COMMITTEE ON PUBLIC ACCOUNTS

The most fundamental feature of the General Accounting Office is that it is an instrumentality set up by Congress through which the latter may control the administration from the standpoint of assuring itself that there is rigid compliance with all of its orders in respect to the collection, custody, and disbursement of public funds and may obtain independent information regarding the efficiency with which the administrative services are performing their duties. The relationship between Congress and the General Accounting Office is thus that of principal and agent. This being so, Congress should provide itself with means through which it can assure itself that its agent is properly performing its duties and can take action upon the matters that are brought to its attention by such agent through its annual and other reports. Congress as a whole cannot consider the report of the Comptroller General and pass upon the recommendations contained in it. What is needed is that each House, or, possibly better still, the two Houses jointly, shall create a committee on public accounts, whose duty it will be to receive the report of the Comptroller General and, acting on behalf of the two Houses, subject its presentation of facts and recommendations to careful scrutiny and such further examination as it may find desirable for the purpose of determining the fidelity with which the administration has performed its duties and

of bringing to the attention of Congress matters requiring its action.

The need has been demonstrated by experience under this system. Grave issues have arisen between the General Accounting Office and the administrative services which can properly be adjusted only by Congress. As has been pointed out, most of these issues are questions both of law and of expediency in respect to the manner in which governmental affairs shall be conducted. This being so it is a mistake to rely upon the courts for the settlement of these issues, since it may well happen that the decisions arrived at while being fully justified from the standpoint of existing law will sustain practices which are counter to principles of good administration. The annual reports of the Comptroller General have, moreover, pointed out various provisions of existing law which in his opinion should be changed. Many of these relate to matters of great importance and urgency. With a committee such as is suggested, all of these matters could receive prompt attention and that by a body which will soon become familiar with all the details of the problems of financial administration and control.

Any doubt that there may be regarding this can, it is believed, be removed by a consideration of the experience of Great Britain in seeking to perfect the means for giving reality to the control of its House of Commons over the conduct of the financial affairs of the government.

As set forth by the writer in his study of the system of financial administration of Great Britain¹ real con-

¹ *The System of Financial Administration of Great Britain (1917)*, by W. F. Willoughby, W. W. Willoughby and S. M. Lindsay. Institute for Government Research, Studies in Administration.

trol by Parliament over the expenditure of public moneys was not secured until the middle of the nineteenth century. The starting point in perfecting the present efficient system of financial administration of Great Britain was the report of the great Committee on Public Monies in 1856-7. This report, after recommending that provision be made for a complete audit of all public accounts by an officer of, and directly responsible to, the House of Commons, further recommended "that these audited accounts be annually submitted to the revision of a committee of the House of Commons to be nominated by the Speaker." This suggestion was one of the first recommendations of the Committee to be acted upon. In 1862 Mr. Gladstone, as Chancellor of the Exchequer, secured the adoption of a standing order making provision for a committee of this character under the title of Committee on Public Accounts.

This Committee, which has had an uninterrupted existence since that date, has constituted one of the most important features of the system that Great Britain has step by step built up for the administration of her financial affairs. From the start the Committee has taken its duties seriously and membership on it has been highly regarded. A noteworthy feature of its organization is that, with rare exceptions, its chairman has been selected from the opposition, so as to emphasize the policy that has been adopted of giving to the work of the Committee a non-partisan character. The function of the Committee may be broadly stated to be that of annually reviewing the financial operations of the government for the purpose of determining the fidelity with which administrative officers have performed their duties. In making this review it not only has before it the reports of the Com-

troller and Auditor General, but it also has the direct assistance of those officers. As Col. Durell has pointed out in his noteworthy study of parliamentary control over financial operations: *

The Public Accounts Committee possesses the great advantage of being served regularly and continuously by a great public department under the Comptroller and Auditor General, who is able by personal attendance at the meetings to assist its labors in a manner in which his report alone could not assist a committee of the whole house. A principal permanent official of the Treasury also attends every meeting. The committee is thus able to obtain accurate knowledge collected by trained officers. The Comptroller and Auditor General has been described as to a large extent the acting hand of the Committee. He guides the Public Accounts Committee in their labors, he detects the points of question, presents them with such information concerning them as he has obtained and leaves the committee to pursue them further, to consider them and report on them. A committee would probably never be able to detect any official extravagances or scandals unless guided by an official bloodhound who is in their service and with such powers as the Comptroller and Auditor General possesses.

It is important to note that, just as the functions of the Comptroller and Auditor General properly extend beyond those of making a mere formal or proper audit of expenditures to that of pointing out wherein monies have been wastefully or ill-advisedly spent, so the functions of this Committee include the duty of detecting not merely illegal action but the extent to which discretion in respect to the application of funds has been unwisely exercised. In the words of Col. Durell, "whether dealing

* The Principles and Practices of the System of Control Over Parliamentary Grants by Col. A. J. V. Durell, Chief Paymaster, War Office, p. 115, London, (1917).

with subjects originally suggested therein, or in taking a fresh line of its own, the functions of the committee extend, however, beyond the formality of the expenditure to its wisdom, faithfulness and economy."

Regarding the practical advantages of the work of this Committee there can be no doubt. To a considerable extent it is looked upon as the crowning feature of the whole system of British financial administration.

This arises not merely from the fact that through it, Parliament is able currently to pass upon the acts of its administrative agents, but from the great restraining influence that the work of the Committee has upon these officers in the expenditure of the funds granted to them. Thus, to quote Col. Durell again: *

It has been stated, indeed, that nothing has a greater deterrent effect on a department than the fear of having to go before the Public Accounts Committee and that the accounting departments stand more in awe of this committee than of the House of Commons itself, probably because there is less chance of escaping its close scrutiny. The Chairman of the Committee expressed the same opinion to the House. "There is" he said "a great deal of human nature in the world, and fear is one of the greatest helps in keeping men straight. The fear of the Public Accounts Committee and the very searching examinations that take place thus does a great deal to keep in the path of rectitude the members of the civil service."

No one can study the work of this Committee, and the part that it plays in the system of financial administration of Great Britain, without being convinced of the need for such a body in the Congress of the United States. It represents, indeed, the last link in the chain of agencies,

* *Ibid.*, p. 112.

the other links of which are the President as administrator in chief, the Bureau of the Budget, the Committees on Appropriations of the two Houses, and the Office of Comptroller General, through which an efficient administration of the financial affairs of the national government is to be secured. Without it much of the advantages anticipated from the creation of the independent office of Comptroller General may be lost.

The creation of such a committee, it should be noted, will represent, not an addition to, but a simplification of, the present committee system of the House. This body now has eleven committees on expenditures in the several departments and on public buildings whose duties are in general those which it is proposed should be conferred upon the committee on public accounts. It is notorious, however, that these committees have never functioned in the sense of annually reviewing in a systematic manner the financial and other operations of the government. The proposed committee would take their place and, following the practice of the new Committee on Appropriations, could, if deemed wise, be organized in subcommittees corresponding to the main divisions and departments of the government. The important thing, however, is that the new committee shall be recognized as one of the most important committees of Congress and that it shall be under the definite obligation, each year, of receiving the report of the Comptroller General, of examining that document, of making investigations, with the aid of that officer and also possibly of the Director of the Bureau of the Budget, of points raised in the Comptroller General's report or otherwise coming to the attention of the committee, and of reporting the results of its work to Congress.

It is gratifying to note that the desirability of creating a committee such as is here proposed is recognized by members of the House. Representative R. Walton Moore at the last session of Congress offered a resolution providing for the creation of such a committee, which received the hearty endorsement of other members, including Martin B. Madden, Chairman of the Committee on Appropriations. That the latter was sincerely convinced of the desirability of such action is shown by his advocacy of it in his article in the *Saturday Evening Post*, from which we have already quoted.⁴ In this article he said:

A further step of legislative procedure is necessary in the House. It has been accomplished in the Senate. The House has eleven different committees whose duty it is to investigate public expenditures—one committee for each of the ten executive departments, and the eleventh for expenditures on account of public buildings. There are no expenditure committees for the Veterans' Bureau, the Interstate Commerce Commission or of any of the other units of government not attached to any executive department. These expenditure committees seldom function except when the House or Senate is controlled by one political party and the administrative branch of the government by another. Even then their investigations cannot be comprehensive. They may deal with specific and individual instances of mismanagement or maladministration, but there is no coördination of their activities or any opportunity to harmonize the broader aspects of the expenditure-investigation problem. The remedy for this situation is the abolition of the eleven committees and the creation of a single wide committee on public expenditures. Such an organization functioning with the General Accounting Office would, in my opinion, be a factor for an incalculable amount of good. Practically the only systematic attention now given by Congress

⁴The New System in Government, June 9, 1923.

to the investigation of expenditures is the time devoted by the appropriating committees in the course of the examination of the budget estimates. That work must of necessity be incomplete. The time available for visaing budget estimates and the magnitude of the work makes it impossible for any committee or committees to perform the two duties simultaneously and do justice to both. The creation of a centralized committee on public expenditures would relieve the appropriating committees and at the same time would provide an agency whose thorough investigations would be of inestimable value to the appropriating committees in the performance of their duties.

Again, in alluding to the resolution introduced by Representative Moore, he said, on the floor of the House: *

I have felt, I will say to the gentleman from Virginia, that is the one missing link in our fiscal organization where we are weak where we ought to be strong. If we had such a committee as the gentleman has called to our attention now, it would be a very wonderful assistance to the Committee on Appropriations, in studying problems, investigating facts which would enable them to keep in close touch with the Comptroller General and between the Comptroller General and the Expenditures Committee and Appropriations Committee. I think we could, and I feel sure we would so organize the expenditures after the money is appropriated for them as to keep all the expending officers of the Government within the law, to say the least.

* *Cong. Record*, December 10, 1926.

CHAPTER XII

STATUS AND FUNCTIONS OF DISBURSING OFFICERS

As has been pointed out the great bulk of payment of claims is made by the some three thousand disbursing officers who are scattered throughout the government services at Washington and in the field. These officers receive the money with which to make payments through advances made to them from the treasury through the issue of accountable warrants. As they and their bondsmen are personally responsible for all disbursements made by them which may be subsequently found improper by the General Accounting Office, it becomes necessary for them, as a matter of self protection if for no other reason, to examine all claims presented to them for payment for the purpose of determining not only their accuracy but also whether they are proper charges against the appropriation over the disbursement of which they have jurisdiction. This means that they must construe the appropriation acts and the statutes upon whose provisions the claims are based, and in case of doubt secure from the Comptroller General a ruling in advance of making payment.

The fact that these officers are officers of the services to which they are attached, and thus subject to the direction of the heads of such services, places them in an anomalous position. Claims may, and undoubtedly do, arise regarding whose justice they may have doubt and which, if paid, may get them into trouble with the Gen-

eral Accounting Office, but which the heads of the service or department desire to have paid. If they make payment, the items may be disallowed by the General Accounting Office. If payment is refused, they incur the displeasure of their administrative superior, which may jeopardize their position or advancement. There are, moreover, other claims which, while technically within the law and thus able to pass the scrutiny of the General Accounting Office, may lack equity, be excessive, or for other reasons raise questions regarding the propriety of their payment. Due to their status, disbursing officers are agents of, rather than checks upon, the administrative services in the expenditure of funds. As the Comptroller General in his annual report for 1924 points out: ¹

While the law provides for and clearly contemplates submission by the heads of departments and establishments to the accounting officers for advance consideration and decision all doubtful questions as to the availability of appropriated funds for proposed uses, to the end that unauthorized transactions may be avoided, the system whereby the administrative office possesses not only the power to incur obligations, but has control over the officer entrusted with funds to make payments, so encourages administrative action even in doubtful cases, without securing in advance the views of the accounting officers, as to result in uses of public funds that may not lawfully be approved by the accounting officers when the transactions are found in the disbursing officer's account—resulting in disallowances in such account, of course, but after the unauthorized transaction has been completed—after the damage has been accomplished. The difficulty then comes in securing a proper adjustment of the account—often a costly procedure and in too many instances the innocent and not the guilty must suffer.

¹ P. 1.

Speaking on the same subject in his annual report for 1926, the Comptroller General further says:*

. . . the effectiveness of our present accounting system is being impaired by the increasing tendency of spending agencies, by means of their administrative control over disbursing officers, to effect payments not authorized by law, relying upon the Congress to grant relief to the disbursing officer when credit for the illegal payments is disallowed in the settlement of his accounts.

The foregoing raises the question as to whether the existing system, where the disbursing officers are officers of the services for which they make disbursements, is a proper one. An alternate system would be one where all disbursing officers would be officers of the Treasury Department and, in effect, deputies in the field of the Treasurer of the United States. This system would represent practically a reversion to the original system installed when the Treasury Department was created. That system provided that all disbursements should be made by the Treasurer of the United States. Under the system here suggested, all disbursements would be made by him or his deputies.

This system would have a number of advantages. The first is the one already mentioned that the disbursing officer would be in a position where he could more effectively question the propriety of payments. Most if not all disbursements are made on the certificate of some administrative officers, that document certifying, when the payment for personal service is involved, that the person to be paid was duly employed, that his rate of compensation was as set forth in the certificate, and that

* P 6.

the services were in fact rendered, and, in the case of supplies or materials purchased, that the payment conforms to an agreement legally entered into, and that the supplies or materials were in fact received and conformed as regards both quality and quantity to the purchase agreement. Opportunity manifestly exists for negligence or positive fraud in the execution of these certificates. The payroll may be padded, persons duly employed may not in fact render any service, materials purchased may not be properly inspected or they may be short in quantity delivered or inferior in quality to that bargained for. While it may be no part of the duty of the disbursing officer to verify such certificates, he should at least be in a position where, without jeopardizing his position or chances of advancement, he could bring the matter to the attention of the administrative officer superior to the one executing the certificate and if need be to his superior, the Treasurer of the United States and, through him, to the Comptroller General. The possibility that he could take such action, would constitute a powerful check upon making contracts and certifying to their execution.

Secondly, if all or substantially all of the three thousand odd disbursing officers were brought under a common direction as field deputies of the Treasurer of the United States, it would be possible to effect substantial economies by having one disbursing officer do the work now done by a number of such officers. In many of the important cities of the United States are to be found the field stations of a large number of services, each of which has its special disbursing officer. In many if not all of these cities, a single disbursing office could take over the disbursing work for all the services thus located. It is estimated that such a consolidation will permit of a sub-

stantial reduction in the force of employees now engaged in work of this kind and result in a direct economy running into many thousands of dollars.

Finally, under the proposed system the disbursement service can be placed upon a career basis, with the conditions of entrance into the service and of promotion from one grade to another such as will make the service attract and retain competent men and develop an esprit de corps and incentive to faithful and competent work that cannot fail to redound to the benefit of the government.

The adoption of this system is strongly urged by the Comptroller General. In his annual report for 1926 he thus says:¹

Originally payments were made only through Treasury warrants and after audit. This was the safe method devised by the Fathers, but as the volume increased there appeared need for prompter payments than then was possible under such safe method, and the present-day disbursing officer came into being. In the beginning he was a trusted representative of the Treasury, with adequate bond for faithful accounting, but gradually there was obtained from the Congress permission to have these disbursing officers attached to the spending agencies—for what reason it is difficult to perceive—until now they are generally so attached as officers or employees of the agencies which pledge the appropriations. Such an arrangement, as seems obvious, tends to weaken control by law and to encourage disregard of limitations and directions given therein, and of course, makes most difficult the full accomplishment of the duties imposed by law upon the accounting officers.

It would tend greatly to encourage law observance in the use of appropriated funds if those intrusted with the duty of making payments were removed from the control

¹P. 3.

of the spending agencies. Under the existing system of the disbursing officer being immediately subordinate to the officer having administrative authority over and the right to pledge the appropriation, because of such relationship and the subordinate position of the disbursing officer, there is, of course, unwarranted temptation to act in incurring obligations where legislative authority has not been granted, which temptation would be removed if the disbursing officer were free from such administrative influence and control and left for guidance to the single influence of his personal and bonded responsibility for faithful accounting under the law. In such a condition it would be folly, of course, for a spending agency to do other than observe the law. There would be little chance of payment otherwise.

Then, too, there are now approximately one thousand persons authorized to disburse funds in continental United States alone—to say nothing of the many stationed abroad—and if the duty of making payment of Government obligations were centralized and intrusted only to those highly trained in such matters the number could be greatly reduced, to possibly less than 50 in continental United States, with a tremendous saving. This would likewise bring about economies in the General Accounting Office, as there would be a proportionate reduction in the number of accounts received for audit and such accounts would be in infinitely better condition, and, for the most part, free from unlawful payments.

Though the disbursing officers are, from the administrative standpoint, subordinate officers of the services to which they are attached, and, if transferred to the Treasury Department would be subordinate officers of the Treasurer of the United States, they are from the standpoint of accounting procedure subject to large powers of direction and control on the part of the General Accounting Office. This arises from the fact that these officers must render an account of their receipts and disburse-

ments to that office, that the latter has the final determination in passing upon such accounts except as set aside or modified by the courts or Congress, and that the General Accounting Office has the duty of prescribing "the forms, system and procedure for administrative appropriation and fund accounting in the several departments and establishments, and for the administrative examination of fiscal officer's accounts and claims against the United States."

Since the disbursing officers are not the "administrative" subordinates of the General Accounting Office the only means that that office has of compelling compliance with its instructions, other than by the disallowing of particular items in the account which can only be used when such items are improper, are by refusing to settle the accounts of the delinquent officer or to cause to be issued to him further funds with which to make disbursements. The first of these methods is inadequate, as is shown by the failure of the General Accounting Office to secure compliance with its instructions on the part of collectors of customs through its refusal to settle their accounts. The second means, that of refusing to authorize any further advance of funds from the treasury would be effective in the case of all disbursing officers had the General Accounting Office unrestricted authority to make use of it. This, however, the General Accounting Office does not have. The law on the subject, which is contained in Section 12 of the Dockery Act of July 31, 1894, as amended by Section 4 of the Act of March 2, 1895, reads as follows:*

All monthly accounts shall be mailed or otherwise sent to the proper officer at Washington within ten days after

*28 Stat. L., 162, 209; 28 Stat. L., 764, 807.

the end of the month to which they relate, and quarterly and other accounts within twenty days after the period to which they relate, and shall be transmitted to and received by the Auditors within twenty days of their actual receipt at the proper office in Washington, in the case of monthly, and sixty days in case of quarterly and other accounts. Should there be any delinquency in this regard at the time of the receipt by the Auditor of a requisition for an advance of money, he shall disapprove the requisition, which he may also do for other reasons arising out of the condition of the officer's accounts for whom the advance is requested; but the Secretary of the Treasury may overrule the Auditor's decision as to the sufficiency of these latter reasons: *Provided*; That the Secretary of the Treasury shall prescribe suitable rules and regulations, and may make orders in particular cases, relaxing the requirement of mailing or otherwise sending accounts, as aforesaid, within ten or twenty days, or waiving delinquency, in such cases only in which there is, or is likely to be, a manifest physical difficulty in complying with the same, it being the purpose of this provision to require the prompt rendition of accounts without regard to the mere convenience of the officers, and to forbid the advance of money to those delinquent in rendering them: *Provided further*, That should there be a delay by the administrative Departments beyond the aforesaid twenty or sixty days in transmitting accounts, an order of the President, or, in the event of the absence from the seat of government or sickness of the President, an order of the Secretary of the Treasury, in the particular case, shall be necessary to authorize the advance of money requested; *And, provided further*, That this section shall not apply to accounts of the postal revenue and expenditures therefrom, which shall be rendered as now required by law.

The Secretary of the Treasury shall, on the first Monday of January in each year, make report to Congress of such officers as are then delinquent in the rendering of their accounts or in the payment of balances found due from them for the last preceding fiscal year.

It is hardly necessary to point out that these provisions are thoroughly out of harmony with the fundamental principle of the Budget and Accounting Act, which has in view the vesting in the independent General Accounting Office of full responsibility for controlling treasury receipts and issues and of prescribing and controlling the keeping and rendition of accounts by all disbursing officers. They were inserted in the law at a time when the Comptroller of the Treasury and the six auditors for the departments were subordinate officers of the Secretary of the Treasury. Now that the duties of these officers have been transferred to the Comptroller General, it is inconsistent that the Secretary of the Treasury should continue to have authority in respect to the matter.

The law is clear enough in respect to the establishment of the principle that disbursing officers may be brought to account for failure to render their accounts promptly, or "for other reasons arising out of the condition of the officer's accounts," by a refusal to authorize the grant to them of further funds. It is unsatisfactory, however, in permitting the Secretary of the Treasury, who no longer has responsibility in respect to accounting matters, to overrule the action of the accounting officer. And it is manifestly unsatisfactory that the Secretary of the Treasury should have power in respect to the matter of waiving the requirements of the law in respect to the time of rendition of accounts.

To correct this condition the Comptroller General recommends, in his annual report for 1926,¹ the amendment of the provisions of the law that have been quoted so that they will read as follows:

¹ P. 10.

All officers, and persons in the service of the United States, its corporate or other agencies, who receive moneys of whatsoever character which they are not authorized to retain as salary, pay, or emolument shall render an accounting therefor. Said accounts shall be rendered promptly at the close of the accounting period by such officers, agents, or persons to the proper administrative offices in Washington, and when the administrative examination thereof shall have been completed shall be promptly transmitted by said administrative offices to the General Accounting Office. All such accounts shall be rendered in such form and manner, for such accounting period, and at such times as may be prescribed by the Comptroller General of the United States.

Should there be any delinquency in the rendition or transmission of such accounts at the time of a receipt of a requisition for an advance of money the Comptroller General of the United States shall disapprove the requisition, unless furnished with satisfactory reasons for the delay, and he may also disapprove such a requisition for other reasons arising out of the conditions of the account of the person for whom the advance is requested.

All laws and parts of laws in so far as inconsistent or in conflict with the provisions of this section as here amended are repealed.

This proposed amendment, in addition to bringing the law into conformity with the principle underlying the Budget and Accounting Act, repeals specific provisions of law fixing the accounting periods for which accounts must be rendered and the times within which such accounts must be submitted, leaving that a matter for administrative determination by the Comptroller General. Regarding this the Comptroller General says: *

There has been omitted from the proposed amendatory legislation the prescribing of time limits for the rendi-

* Annual Report, 1926, p. 11.

tion and administrative examination of accounts. It is believed that much more satisfactory results will be obtained by authorizing the Comptroller General to prescribe the period for the administrative examination of accounts, and that the authority granted by the amendatory legislation will ultimately result in securing the prompt rendition of accounts by disbursing officers and agents and the limiting of the time required by the administrative offices to a reasonable period in which to perform the examination and secure such data as may be required for administrative purposes. No time limit is placed by law on the rendition of accounts by postmasters, and this situation has resulted in the securing through administrative regulations of a prompt rendition of accounts and a simplified administrative examination thereof.

It has been pointed out that when a disbursement by a disbursing officer has been disallowed by the General Accounting Office, the only recourse that the latter has is to seek reimbursement from the person to whom the payment was improperly made, and failing this to seek relief from Congress through the passage of what is known as a relief act. In many cases where the disbursing officers has acted in good faith and the government has suffered no material loss due to the fact that it has received value for the disbursement made, it is entirely proper that relief should be granted by Congress. On the other hand, if Congress acts too liberally in respect to this matter, the principle of holding disbursing officers personally liable for improper payments may be unduly weakened. That this danger is a real one, would appear from the following statement of the Comptroller General: '

Ibid., p. 16.

Where in such instances the Congress, either by general legislation, individual relief bills, or otherwise, authorizes credit to the disbursing officer or validates the right of the payees to retain amounts thus illegally received, or both, the action of the accounting officers in carrying out the laws as the Congress had enacted them is set at naught, and the result necessarily is a sustaining of those who violate the laws and a failure to sustain those who obey them.

The more frequently this occurs the less occasion there is for those who illegally acquire possession of Federal funds to feel insecure in their ultimate retention, and the more encouragement they have to resist demands for their return.

Accordingly, may I offer the suggestion that where crediting, validating, or relief legislation is presented to the Congress, if practicable, this office be afforded an opportunity to present to the Congress, preferably through its committees, all pertinent facts in its possession pertaining thereto, in order that the Congress may be fully informed as to all phases of the situation before action thereon.

This recommendation by the Comptroller General would appear to be a thoroughly reasonable one. Incidentally, it may be remarked, that the handling of all relief bills should constitute one of the duties of the committee on public accounts the creation of which is elsewhere recommended.

CHAPTER XIII

THE COMPTROLLER GENERAL AND THE COURTS

Few matters in regard to the work of the General Accounting Office and the administration of the financial affairs of the government generally are of greater importance or have given rise to more serious controversies since the creation of the General Accounting Office, than that of the extent to which the Comptroller General, and, incidentally the disbursing officers and their administrative superiors, are subject to the direction of the courts in passing upon claims or in otherwise handling the accounting work of the government.

In considering this matter certain important principles should be kept in mind: the general principle that the matter of the adjudication of government claims is one that should be handled administratively; the fact that the government cannot be sued except with its own permission; the provisions of the Budget and Accounting Act, 1921, that all claims shall be settled and adjusted in the General Accounting Office; that the Comptroller General shall exercise his functions "without direction from any other officer"; and that the balances of the disbursing and collecting officers as certified by the Comptroller General "shall be final and conclusive upon the executive branch of the government; the distinction between claims against the government by officers of the government and those by private individuals and corporations; and finally the character of the decision or action of the courts

where they have had conferred upon them or have assumed jurisdiction in respect to the determination and payment of claims.

This is not the place to enter into any general consideration of the broad problem of the extent to which it is desirable that there shall be opportunity for a review of administrative action by the courts. Theoretically it may be held that wherever action affects the rights of individuals the latter should have the opportunity of having their rights determined by a court of law. Action upon any such theory, when governments are concerned, would result in disastrous consequences. If fully applied it would increase the difficulty, expense, and delay involved in the conduct of public affairs, if it did not make the whole administrative system unworkable. It would throw upon the courts an unbearable burden of determining how administrative affairs should be conducted and in many instances make the judicial branch the custodian of final administrative powers. The power of the courts to review the assessment of property for purposes of taxation offers a striking illustration. Few acts of a government more directly affect the rights of individuals. Although injustice may be and in fact often is done in making such assessments; if every aggrieved property owner had the right of appeal to the courts for a review of the action of the administrative officer who made the assessment, the judicial and not the administrative branch would become the final authority. The courts have thus wisely refused to take jurisdiction in such cases, when not expressly authorized so to do by statute, unless fraud or misconduct so gross as to amount to constructive fraud is alleged or the procedure has violated the principle of due process as set forth in the constitution.

All of the arguments in favor of this position apply with equal force to the matter of the settlement and adjustment of government claims. As showing an early appreciation of the importance of this principle the following may be quoted from a joint communication by the heads of the executive departments submitted to the Chairman of the Committee on Ways and Means of the House, January 21, 1817.¹

A judicial examination, where the officer should allege that injustice had been done in the settlement of his accounts, would perpetuate the delays in the settlement of the public accounts which have produced the derangement in the accounting offices that are intended to be remedied by the summary procedure recommended by the report. It is highly improbable that injustice will be practiced by the auditing officers; but if it should happen in any case, the appeal could be to Congress, who will always grant relief.

That the courts themselves appreciated the considerations involved is shown by various of their decisions. That rendered in *United States v. Guthrie*,² is especially to the point. It reads in part:

The only legitimate inquiry for our determination upon the case before us is this: whether under the organization of the Federal Government, or by any known principle of law, there can be asserted a power in the circuit court of the United States for the District of Columbia, or in this court, to command the withdrawal of a sum or sums of money from the Treasury of the United States, to be applied in satisfaction of disputed or controverted claims against the United States? This is the question, the very question, presented for our determina-

¹ American State Papers, Miscel., Vol. II, p. 417.

² 17 Howard 284.

tion; and its simple statement would seem to carry with it the most startling considerations—nay, its unavoidable negation, unless this should be prevented by some positive and controlling command; for it would occur, *a priori*, to every mind that a treasury not fenced round or shielded by fixed and established modes and rules of administration, but which could be subjected to any number of description of demands, asserted and sustained through the undefined and undefinable discretion of the courts, would constitute a feeble and inadequate provision for the great and inevitable necessities of the nation. The government under such a régime, or rather under such an absence of all rule would, if practicable at all, be administered not by the great departments ordained by the Constitution and laws, and guided by modes therein prescribed, but by the uncertain and perhaps contradictory action of the courts in the enforcement of their views of private interests.

Again, in the case of *Decatur v. Paulding*,^{*} decided in 1840 by the Supreme Court, Chief Justice Taney, who had himself been both Attorney General and Secretary of the Treasury and was familiar with the problems of administration from the practical standpoint, said:

The interference of the courts with the performance of the ordinary duties of the executive departments would be productive of nothing but mischief; and we are satisfied that such a power was never intended to be given to them. Upon the very subject before us, the interposition of the courts might throw the whole pension fund, and the whole subject of pensions, into the greatest confusion and disorder.

Prior to 1855 this principle that the settlement of all government claims was exclusively a matter of administrative determination, was not only a general one but one

^{*} 14 Peters 496, 10 Law Ed. 579.

knowing no exceptions. There was no provision by which a person believing that his rights had suffered through the action of the accounting officer could appeal to the courts for a review. In that year, Congress, by act of February 24, 1855,⁴ established a special tribunal known as the Court of Claims and conferred upon it jurisdiction to hear and decide certain classes of claims by private persons and corporations. The purpose of the establishment of this tribunal was not so much to provide a means for a judicial review of the action of accounting officers as to relieve Congress of the great burden of examining into the merits of claims presented to it. The court was thus given the mere power of examining into the merits of the claims referred to it by Congress and brought in it by persons authorized so to do and of making an award setting forth its conclusions. Such awards imposed no obligation upon disbursing or accounting officers to pay them, and the court itself had no authority to issue execution to enforce its findings. All that the court could do was to report its findings to Congress for such action as the latter saw fit. Normally appropriations would be made to satisfy the awards, but there were many cases where Congress was unwilling that the claims should be paid and refused to pass appropriations for their payment. It will thus be seen that the establishment of this court in no way curtailed the powers of Congress in respect to the determination of what expenditures should be made or subjected the accounting officers to judicial direction in respect to the performance of their duties.

In 1887 was passed what is known as the Tucker Act,⁵ by which concurrent jurisdiction was conferred upon

⁴ 10 Stat. L., 612.

⁵ Act of March 3, 1887; 24 Stat. L., 505.

the federal district courts to entertain claims that might be brought in the Court of Claims. This was done to avoid the necessity for claimants residing away from the District of Columbia having to resort to that tribunal. This was subsequently amended⁵ to take from under its provisions claims by officers of the government. Such officers must, therefore, prosecute their claims in the Court of Claims at Washington.

It will be seen from the foregoing that though provision has been made for the judicial determination of the merits of claims, the courts rendering the decision have no power, so far as any express provision of law is concerned, to issue an order to the accounting officers as to how a claim shall be settled or to make payments of claims in accordance with their decisions. Though this is so, the question is nevertheless presented as to whether it is not the duty, if not the legal obligation, of the accounting officers to follow the decisions of the courts. This the Comptroller of the Treasury, and his successor the Comptroller General, have uniformly refused to do, unless such decision conforms to their own opinion. The reasons for the refusal of these officers to be bound by the decisions of the Court of Claims and the district and circuit courts when acting as a court of claims have been repeatedly set forth by the Comptroller of the Treasury and the Comptroller General in decisions rendered by them. One of the most complete statements of their position is contained in an opinion rendered in 1885 by Comptroller of the Treasury Lawrence, who had had previous experience as a judge and a member of Congress. This opinion in part reads as follows:⁶

⁵ Act of March 3, 1911; 36 Stat. L., 1087, 1093.

⁶ 6 First Comp. Dec., 244, 245.

The independent action of the accounting officers on their own judgment as to the law is essential to prevent perpetuation of error.

The Supreme Court of the United States is believed to be the most learned and able judicial body of this or any other country. It has all the requisite facilities for reaching "the perfection of reason" which is "law." It is not strange, therefore, nor is it in the least degree any disparagement of the great learning and ability of the Court of Claims, that many of its rulings have been reversed by the august tribunal to whose decisions all so justly bow with willing deference. This shows the possibility that other decisions of the Court of Claims might have been reversed, if the amount in controversy had been sufficient to justify an appeal, or if for other reasons appeals were not taken, or, if taken, were withdrawn. If accounting officers in allowing claims, for the repayment of which there is an available appropriation, should in all cases accept and act upon all decisions of courts not of last resort, an erroneous allowance or decision in such cases could never be corrected (Rev. Stat. 191). Thus, the right of the United States would be sacrificed. And it is utterly impracticable to adopt any such principle in practice. The rulings of the Court of Claims have not always been uniform. The court has overruled some of its own decisions. Congress has not deemed it advisable to give the court authority to render judgment requiring the United States to pay money even for the smallest amount, which shall be absolutely final—one from which no appeal can be taken. It is the only court which is thus limited. Every other court can render some judgments which cannot be revised in any form by any other tribunal. The judgments of the Comptrollers as to all claims within their jurisdiction allowed by them and paid, under appropriations applicable thereto, comprising probably more than 98 per cent in amount, of all claims by them adjudged, are absolutely final and conclusive (Rev. Stat. 191; 4 Lawrence Compt. Dec. Introd. XXV). There is no power which can change them. To say that the Comp-

trollers, exercising such jurisdiction, entrusted by law with such powers, shall blindly and against their own judgment, follow the rulings of a court which can render no judgment as stated from which an appeal cannot be taken, would seem to reverse the principles upon which jurisdiction seems to have been conferred upon the respective tribunals mentioned. Even in those matters over which courts have exclusive jurisdiction they generally adopt the construction given to statutes, and the general principles of national executive common law established by executive officer (3 Lawrence Compt. Dec. Introd. XXV, *United States v. Moore*, 95 U. S. 763; *Edward's Lessee v. Darby*, 12 Wheaton, 210; *United States v. The State Bank of North Carolina* 6 Peters, 29; *United States v. Pugh*, 99 U. S. 265; *United States v. Bowen* 100 U. S. 511; *Swift Co. v. United States*, 105 U. S. 695).

And there are sufficient reasons for this. Executive officers must necessarily be more familiar with those statutes and those questions, which they are constantly called upon to examine and enforce than some of the courts, in which they are rarely considered.

If the decisions of the Court of Claims are, on general principles of law, to be regarded as conclusive guides to accounting officers, *a fortiori* the decisions of other courts of the United States not of last resort, but having power to render judgments, *subject to no revision*, must equally become such guides. If so, then the danger of perpetuating errors will be increased. And accounting officers will find it impossible to follow such a standard because decisions will be found conflicting. The result of attempting to establish such standard is to find rules irreconcilably in conflict, not only with each other, but with principles settled by the highest courts of states.

It seems unnecessary to enlarge upon a question so completely set at rest by authoritative decisions, by reason, by statute, and the structure of the government as ordained by the Constitution. The decisions of the Court of Claims carry persuasive weight with accounting officers, who will adopt or reject them in executive adminis-

tration, as they may deem them correct expositions of the law or otherwise. Such decisions impose no legal obligation on such officers to follow them in practice. They may aid or enlighten such officers, but they do not guide or control them.

The attitude of the present Comptroller General on this matter is set forth in his annual report for 1926 in the following way: *

While this office promptly examines and carefully considers the decisions of the lower courts as rendered in so far as they bear upon its problems, and applies them for accounting purposes to the extent it consistently can with its knowledge of their effect from the standpoint of Government accounting, thereby lessening in so far as it may any variance of its decisions with those of the lower courts, if after such careful consideration of all phases involved it still concludes its position to have been correct it must in the interest of the United States adhere thereto, notwithstanding a divergence of views, pending the rendition by the Supreme Court of the United States of a decision upon the point or points involved, or an expression by Congress through legislation.

There are certain practical reasons why the Comptroller General is justified in refusing to be bound by the decisions of the Court of Claims and the inferior federal courts. He is not directly represented in the court. It is the duty of the Department of Justice to represent the government in such cases, and there have been not a few cases where that department was in sympathy rather with the claimant, when such claimant was an administrative officer acting with the approval of the head of the department to which he was attached, than with the contention of the Comptroller General. In some of these

* Pp. 25-26.

cases the Attorney General may have rendered an opinion adverse to the contention of the Comptroller General. He is thus in the anomalous position of having to take a stand in court contrary to that which he has taken in complying with the request of the President or the head of a department for an opinion on the matter at issue. And the Comptroller General is in the disadvantageous position of being represented by counsel who may not be convinced of the justice of his case. Furthermore, if the decision of the trial court is adverse to the Comptroller General, it rests with the Department of Justice to determine whether an appeal therefrom shall be taken to a higher court. As a matter of fact, it is known that the Comptroller General has not in all instances been satisfied in respect to the manner in which his side of issues before the courts have been presented and urged by the representatives of the Department of Justice, or with the refusal on the part of the Department of Justice to appeal from decisions adverse to his contentions. Regarding this dependency of the Comptroller General upon the Department of Justice in respect to the taking of an appeal, the Comptroller General has the following to say as to one case where the decision was adverse to his contention: *

I requested the Department of Justice to apply to the Supreme Court of the United States for a writ of certiorari to review the action of the lower courts. However, the solicitor general refused to present such petition. He filed a petition which had been prepared in this office and signed by the solicitor thereof, but also filed a separate statement giving it as his opinion that the decisions of the courts below were correct. The Navy defendants also filed a statement to the effect that they were merely

* Annual Report, 1926, p. 9.

formal parties. The action upon the record as thus presented of apparently opposition of both the Department of Justice and the Navy Department was simply that the Supreme Court of the United States denied the writ of certiorari.

In no case has the Comptroller General failed to follow the decision of the Supreme Court of the United States.*

Though the Court of Claims and the district courts acting as a court of claims cannot enforce their decisions upon the Comptroller General, the serious question has been presented as to whether the federal courts acting under their general powers may not entertain jurisdiction in respect to the settlement of claims and through the exercise of the use of the extraordinary remedies of writs of certiorari, mandamus, and injunction, compel disbursing officers and the Comptroller General to take action which they would not otherwise do.

It has been pointed out in Chapter VIII, "Enforcement of Collection of Claims Due the Government," that officers of the government have appealed to the courts to restrain the Comptroller General from collecting claims alleged to be due by them to the government through the process of deducting the amounts due from their salaries and that the courts have in numerous instances entertained such petitions and have issued orders restraining the Comptroller General from taking such action. As violation of such orders would constitute a contempt of court and subject the violator to severe punishment, the Comptroller General has had no alternative but to submit to such orders.

* For an exceedingly able consideration of this subject see O. R. McGuire, *The Accounting Officers of the United States and Judicial Precedents*, *Illinois Law Review*, March, 1925. The author wishes to express his indebtedness to this article.

It has been the contention of the Comptroller General not merely that the courts were wrong in their decisions in these particular cases but that they erred in assuming jurisdiction at all. To quote from his annual report for 1926,²¹ proceedings should be

through the ordinary judicial processes—suits against the United States in the Court of Claims or the applicable district court of the United States where the matter may be contested on the merits—and not by the extraordinary proceeding of mandamus or injunction wherein the merits of the settlements cannot be considered and were not considered in the recent proceedings stated.

Even in respect to matters of a purely ministerial character the Comptroller General would seem to deny any real authority on the part of the courts to control his actions, since he has stated that “if there is a single ministerial function devolving upon the General Accounting Office I have been unable to observe it.”²² That the Comptroller General is wrong both as regards the fact as to whether some of his duties are of a ministerial character and the power of the courts to compel him to perform acts that are of a purely ministerial character through the issue of writs of mandamus or injunction, would seem to be definitely determined by the decision of the Supreme Court of the United States in the case of *Wright v. Ynchausti* that has been commented upon in Chapter VII “Settlement and Adjustment of Claims Due the Government.” In that case the court decided that the signing of a warrant duly made out and properly executed was a ministerial act, and directed the issue of a mandamus to compel such action.

²¹ P. 9.

²² Annual Report, 1924, p. 6.

CHAPTER XIV

CONCLUSION

The foregoing chapters, if of value for no other reason, have at least served the purpose of making known the importance of the General Accounting Office in the system of public administration of the United States, and the gravity of the issues that have presented themselves in the course of its operations. From the standpoint of size and expense alone the General Accounting Office ranks with the big establishments of government. Its personnel numbers nearly two thousand and the current appropriation for its support is over \$3,700,000. In importance as ensuring honesty and faithfulness in the conduct of public affairs, it is equalled by no other institution. In respect to the character of the responsibilities resting upon this office it is pertinent to quote the following from the Comptroller General.¹

Those unfamiliar with the form and content of appropriations acts and the laws under which such appropriations are expended, as well as the history of the accounting offices, are frequently of the impression that the work of the General Accounting Office is mainly one of accounting similar to that of the accounting departments of private business establishments.

Such an impression is erroneous. The matter of computation involved in the work of the General Accounting Office is of comparatively minor importance, for the reason that disbursing officers of the government and the administrative examiners of their accounts generally detect any errors of computation therein, but, as a neces-

¹ Annual Report, 1926, pp. 16-17.

sary check thereon, the General Accounting Office also computes the expenditures stated on the vouchers and on the invoices, etc., attached thereto.

The question whether any particular expenditure or collection is in accordance with law is the principal function of the General Accounting Office. The determination of this question in any particular instance frequently involves consideration not only of the appropriation act or revenue act but a mass of statutes extending back, in many instances, to the beginning of the Government under the Constitution, and not infrequently to the Constitution itself; the decisions of the courts construing said statutes; the decisions of the former accounting officers of the United States; the hearings, reports, bills, and debates in Congress; and administrative regulations and practices. Also there are usually involved questions of fact to be investigated and additional matter pertaining thereto procured as to the expenditure or collection.

The General Accounting Office, though inheriting many duties of prior existing agencies, is, with its enlarged powers and duties, a comparatively new institution. It has not as yet fully found itself, and certainly its status, functions, and problems are not fully appreciated even by other government agencies. To this in large part is due the friction that has developed between it and the operating services, which has made necessary the devoting of so large a part of this volume to matters that are still at issue.

As regards the issues that have arisen in connection with the operation of this agency, the writer has not hesitated to express his opinions. In doing so, he recognizes, however, that these issues are so large that a final determination of them should not be made until a more careful investigation of the factors involved than it was feasible here to make has been conducted. These issues

raise questions both of principle and of administrative expediency. From the former standpoint it is believed that it is difficult to avoid supporting the General Accounting Office in most of its contentions. If it has erred in construing the law defining its powers and duties, remedial legislation is the remedy. Even in respect to the exceedingly important matter of the authority and duty of the General Accounting Office to consider the merits of the settlement of claims of the government upon taxpayers arising out of the administration of the customs and internal revenue laws, the principle that there should be some independent control over the action of the collection officers is one that can hardly be contested. Practical difficulties of an administrative character may render it inadvisable to attempt to put this principle into execution.

As so many different questions have been discussed, it is thought that a useful purpose will be served by attempting in this concluding chapter to bring together in one place a statement of the steps which, in the opinion of the writer, should be taken to put this most important agency of the government upon a satisfactory basis. These steps are as follows:

Status and General Function of the General Accounting Office. Among the most important changes that it is desirable to have brought about in respect to the General Accounting Office is a fuller recognition on the part of administrative officers, not only of the special status of this institution, but also of its desirability from the standpoint of the general interests of the government. With such a recognition, much of the present antagonism to the work of that office should disappear and be replaced by a spirit of coöperation. If such a condition could be reached, such differences as those having to do with the

direct settlement of transportation claims and the collection of claims due by officers to the government through the making of deductions from their pay, either would not arise or if arising would be adjusted on a basis of what is most advisable from the standpoint of the general interests of the government rather than that of seeking to stand on technical rights.

The General Accounting Office as the Central Accounting Office. A second change that should be made at the earliest practicable date is the erection of the General Accounting Office into the office where are kept the general and controlling accounts of the government and from which will issue the financial statements and reports showing the financial condition and operations of the government as a whole. This will involve taking over all the accounting work of the Division of Bookkeeping and Warrants of the Office of the Secretary of the Treasury except that having to do with the maintenance of a summary appropriation ledger and record of treasury receipts and issues.

System of Central Accounts. The General Accounting Office should at once work out a modern system of central accounts which will provide for giving the information needed regarding the financial condition and operations of the government. In this system provision should be made for such fundamental distinctions as those between different classes of funds, between revenue and non-revenue receipts, between expense and capital outlay, and the like.

Classification of Receipts and Sources. A feature of this accounting system should be a careful classification of receipts according to sources from which derived, the

use of which should be made obligatory upon all collecting officers in recording and reporting their collections.

Financing of Revenue Producing Enterprises. Legislation should be enacted providing for the careful segregation of the financial operations of all revenue-producing enterprises from those of the other services of the government and the financing of those enterprises through revolving funds.

Completion of Installation of the Standard Accounting System for the Operating Services. As rapidly as possible the installation of the standard accounting system for the operating services should be completed and a system of receiving monthly reports of operations under that system established by the General Accounting Office.

Revision of System of Appropriation Heads. A careful study should be made by the General Accounting Office, in cooperation with the Bureau of the Budget and the Committee on Appropriations of the House, of the present system of itemizing appropriations with a view to lessening the number of heads under which funds are granted and making such heads conform more nearly to the operating and accounting requirements of the several operating services.

Discontinuance of Use of Settlement Warrants. The practice of having certain payments made by direct orders on the Treasurer of the United States through the execution of settlement warrants should be discontinued and all payments should be made by disbursing officers, to the end that the accounts of these officers will contain a complete showing of disbursements in respect to the organization units or activities in regard to which

they have jurisdiction. This is a minor matter, but the change will tend to simplify and render more uniform the system of making disbursements and accounting therefor.

Definite Determination of the Power of the Comptroller General in Respect to the Construing of General Statutes. There is need for legislation that will definitely determine the grave issue now existing as to whether the construction of statutes under which claims against the government arise shall be a function of the Comptroller General or the Attorney General.

Extension of the System of the Direct Settlement of Claims against the Government in the General Accounting Office. Legislation should be enacted authorizing the Comptroller General to provide for the direct settlement of claims against the government in the General Accounting Office when it is found that such procedure is in the interest of the accurate, economical, and prompt settlement of such claims.

Extension of the System of the Settlement of Claims against the Government before Payment. Legislation should be enacted authorizing the General Accounting Office to provide, where circumstances justify, for a system of examining and settling claims against the government by members of its staff detailed to work in conjunction with the operating services, the purpose being to substitute a single examination or audit for a double examination, once by the operating service and once by the General Accounting Office, and to have the final settlement precede the payment of the claims.

Determination of the Powers and Duties of the General Accounting Office in Respect to the Settlement of Claims Due the Government. Legislation should

be enacted defining the powers and duties of the Comptroller General in respect to examination of the merits of the settlement by collection officers of claims due the government. If the principle is adopted of treating the settlements arrived at by the collection officers as final and conclusive except as passed upon by the special review tribunals and the general courts in accordance with provisions of law providing for such review, provision should be made by which authority will be conferred upon the General Accounting Office to make test audits of the settlements arrived at and to report the results of such audits to Congress.

Change in Status of Disbursing Officers. Legislation should be enacted providing that, with the possible exception of certain services, such as the military and naval establishments, all disbursing officers shall be officers of the Treasury Department, where they will have in effect the status of deputies of the Treasurer of the United States. Such legislation should further confer upon the Treasurer, with the approval of the Secretary of the Treasury, power to direct disbursing officers to act for a number or all of the services having stations within a given territorial jurisdiction.

Provision for a Congressional Committee on Public Accounts. The rules of the House of Representatives or of the two Houses should be amended so as to abolish the present committees on public expenditures of the House and to create in their place a single Committee on Public Accounts, which shall have jurisdiction over all matters relating to the General Accounting Office and the system of accounting generally of the government, and shall have the duty of receiving the annual and other reports of the Comptroller General, of examining into

the comment on conditions and recommendations contained in such reports, and of bringing to the attention of Congress matters requiring action by that body.

Codification of the Law Regarding Government Accounting and Reporting. A careful study should be made of all existing provisions of law setting forth the powers and duties of the General Accounting Office, disbursing officers, and all other officers having the duty of receiving, having the custody, or disbursement of public funds, prescribing the character of accounts that shall be kept and rendered by them, and particularly the obligation of these or other administrative officers to submit to Congress reports of a financial character, with a view to harmonizing conflicting provisions, repealing requirements no longer serving a useful purpose, and standardizing organization and procedure. This is a work that could well be undertaken under the auspices of the Committee on Public Accounts, the creation of which has been suggested. On the basis of this study there should be prepared a consolidated accounting and reporting act for enactment by Congress, which will take the place of the numerous, and in many cases inconsistent or obsolete, provisions of law now scattered through the statute books.

In the taking of action in respect to most if not all of these matters, the initiative should lie with the General Accounting Office, but it need hardly be said that that office should seek to work in the closest coöperation with the Secretary of the Treasury, the Director of the Bureau of the Budget, and the Chairmen of the committees on appropriations of the House and the Senate, and that full opportunity should be given to the operating services to make known their needs.

APPENDIX

IMPORTANT PROVISIONS OF LAW AFFECT- ING THE GENERAL ACCOUNTING OFFICE

THE "DOCKERY" ACT

1894—Act of July 31, 1894 (28 Stat. L., 162, 205)—An Act Making appropriations for the legislative, executive and judicial expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five and for other purposes.

* * * *

Sec. 3. The Auditors of the Treasury shall hereafter be designated as follows: The First Auditor as Auditor for the Treasury Department; the Second Auditor as Auditor for the War Department; the Third Auditor as Auditor for the Interior Department; the Fourth Auditor as Auditor for the Navy Department; the Fifth Auditor as Auditor for the State and other Departments; the Sixth Auditor as Auditor for the Post-Office Department. The designations of the deputy auditors and other subordinates shall correspond with those of the Auditors. And each deputy auditor, in addition to the duties now required to be performed by him, shall sign, in the name of the Auditor, such letters and papers as the Auditor may direct.

Sec. 4. The offices of Commissioner of Customs, Deputy Commissioner of Customs, Second Comptroller, Deputy Second Comptroller, and Deputy First Comptroller of the Treasury are abolished, and the First Comptroller of the Treasury shall hereafter be known as Comptroller of the Treasury. He shall perform the same duties and have the same powers and responsibilities (except as modified by this Act) as those now performed by or appertaining to the First and Second Comptrollers of the Treasury and the Commissioner of Customs; and all provisions of law not inconsistent with this Act, in any way relating to them or either of them, shall hereafter be construed and held as relating to the Comptroller of the Treasury. His salary shall be five thousand five hundred dollars per annum. There shall also be an Assistant Comptroller of the Treasury, to be appointed by the President, with the advice and consent of the Senate, who shall receive a salary of five thousand dollars per annum, and a chief clerk in the office of the Comptroller of the Treasury, who shall receive a salary of two thousand five hundred dollars per annum.

The Assistant Comptroller of the Treasury shall perform such duties as may be prescribed by the Comptroller of the Treasury and shall have the power, under the direction of the Comptroller of the Treasury, to countersign all warrants and sign all other papers.

The Chief clerk shall perform such duties as may be assigned to him by the Comptroller of the Treasury, and shall have the power, in the name of the Comptroller of the Treasury, to countersign all warrants except accountable warrants.

The Auditors, under the direction of the Comptroller of the Treasury, shall superintend the recovery of all debts finally certified by them, respectively, to be due to the United States.

Section thirty-six hundred and twenty-five of the Revised Statutes is amended by substituting the words "proper Auditor" for the words "First Comptroller of the Treasury (or the Commissioner of Customs, as the case may be)."

Section thirty-six hundred and thirty-three of the Revised Statutes is amended by substituting the words "proper Auditor" for the words "First or Second Comptroller of the Treasury."

Sec. 5. The Comptroller of the Treasury shall, under the direction of the Secretary of the Treasury, prescribe the forms of keeping and rendering all public accounts, except those relating to the postal revenues and expenditures therefrom.

The returns of fees mentioned in section seventeen hundred and twenty-five of the Revised Statutes shall be made as prescribed by the Comptroller of the Treasury.

Sec. 6. Section two hundred and seventy-one of the Revised Statutes is amended to read as follows:

"Sec. 271. The Comptroller of the Treasury, in any case where, in his opinion, the interests of the Government require it, shall direct any of the Auditors forthwith to audit and settle any particular account which such Auditor is authorized to audit and settle."

Sec. 7. Accounts shall be examined by the Auditors as follows:

First. The Auditor for the Treasury Department shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of the Treasury and all bureaus and offices under his direction, all accounts relating to the customs service, public debt, internal revenue, Treasurer and assistant treasurers, mints and assay offices, Bureau of Engraving and Printing, Coast and Geodetic Survey, Revenue-Cutter Service, Life-Saving Service, Light-House Board, Marine-Hospital Service, public buildings, Steamboat-Inspection Service, immigration, navigation, Secret Service, Alaskan fur-seal fisheries, and to all other business within the jurisdiction of the Department of the Treasury, and certify the balances arising thereon to the Division of Bookkeeping and Warrants.

Second. The Auditor for the War Department shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of War and all bureaus and offices under his direction, all accounts relating to the military establishment, armories and arsenals, national cemeteries, fortifications, public buildings and grounds under the Chief of Engineers, rivers and harbors, the Military Academy, and to all other business within the jurisdiction of the Department of War, and certify the balances arising thereon to the Division of Bookkeeping and Warrants, and send forthwith a copy of each certificate to the Secretary of War.

Third. The Auditor for the Interior Department shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of the Interior, and of all bureaus and offices under his direction,

and all accounts relating to Army and Navy pensions, Geological Survey, public lands, Indians, Architect of the Capitol, patents, census, and to all other business within the jurisdiction of the Department of the Interior, and certify the balances arising thereon to the Division of Bookkeeping and Warrants, and send forthwith a copy of each certificate to the Secretary of the Interior.

Sections two hundred and seventy-three and two hundred and seventy-five of the Revised Statutes are repealed.

Section four hundred and fifty-six of the Revised Statutes is amended to read as follows:

"Sec. 456. All returns relative to the public lands shall be made to the Commissioner of the General Land Office."

Fourth. The Auditor for the Navy Department shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of the Navy, and of all bureaus and offices under his direction, all accounts relating to the Naval Establishment, Marine Corps, Naval Academy, and to all other business within the jurisdiction of the Department of the Navy, and certify the balances arising thereon to the Division of Bookkeeping and Warrants, and send forthwith a copy of each certificate to the Secretary of the Navy.

Fifth. The Auditor for the State and other Departments shall receive and examine all accounts of salaries and incidental expenses of the offices of the Secretary of State, the Attorney General, and the Secretary of Agriculture, and of all bureaus and offices under their direction; all accounts relating to all other business within the jurisdiction of the Departments of State, Justice, and Agriculture; all accounts relating to the diplomatic and consular service, the judiciary, United States courts, judgments of United States courts, Executive Office, Civil Service Commission, Interstate Commerce Commission, Department of Labor, District of Columbia, Fish Commission, Court of Claims and its judgments, Smithsonian Institution, Territorial governments, the Senate, the House of Representatives, the Public Printer, Library of Congress, Botanic Garden, and accounts of all boards, commissions, and establishments of the Government not within the jurisdiction of any of the Executive Departments. He shall certify the balances arising thereon to the Division of Bookkeeping and Warrants, and send forthwith a copy of each certificate, according to the character of the account, to the Secretary of the Senate, Clerk of the House of Representatives, Sergeant-at-Arms of the House of Representatives, or the chief officer of the Executive Department, commission, board or establishment concerned.

Sixth. The Auditor for the Post-Office Department shall receive and examine all accounts of salaries and incidental expenses of the office of the Postmaster-General and of all bureaus and offices under his direction, all postal and money-order accounts of postmasters, all accounts relating to the transportation of the mails, and to all other business within the jurisdiction of the Post-Office Department, and certify the balances arising thereon to the Postmaster-General for accounts of the postal revenue and expenditures therefrom, and to the Division of Bookkeeping and Warrants for other accounts, and send forthwith copies of the certificates in the latter cases to the Postmaster General.

The further duties of this Auditor shall continue as now defined by law, except as the same are modified by the provisions of this Act.

Sec. 8. The balances which may from time to time be credited by the Auditors to the Division of Bookkeeping and Warrants, or to the Postmaster-General, upon the settlements of public accounts, shall be final and conclusive upon the Executive Branch of the Government, except that any person whose accounts may have been settled, the head of the Executive Department, or of the board, commission, or establishment not under the jurisdiction of an Executive Department, to which the account pertains, or the Comptroller of the Treasury, may, within a year, obtain a revision of the said account by the Comptroller of the Treasury, whose decision upon such revision shall be final and conclusive upon the Executive Branch of the Government: *Provided*, That the Secretary of the Treasury may, when in his judgment the interests of the Government require it, suspend payment and direct the re-examination of any account.

Upon a certificate by the Comptroller of the Treasury of any differences ascertained by him upon revision the Auditor who shall have audited the account shall state an account of such differences, and certify it to the Division of Bookkeeping and Warrants, except that balances found and accounts stated as aforesaid by the Auditor for the Post-Office Department for postal revenues and expenditures therefrom shall be certified to the Postmaster-General.

Any person accepting payment under a settlement by an Auditor shall be thereby precluded from obtaining a revision of such settlement as to any items upon which payment is accepted; but nothing in this Act shall prevent an Auditor from suspending items in an account in order to obtain further evidence or explanations necessary to their settlement. When suspended items are finally settled a revision may be had as in the case of the original settlement. Action upon any account or business shall not be delayed awaiting applications for revision: *Provided*, That the Secretary of the Treasury shall make regulations fixing the time which shall expire before a warrant is issued in payment of an account certified as provided in sections seven and eight of this Act.

The Auditors shall, under the direction of the Comptroller of the Treasury, preserve, with their vouchers and certificates, all accounts which have been finally adjusted.

All decisions by Auditors making an original construction or modifying an existing construction of statutes shall be forthwith reported to the Comptroller of the Treasury, and items in any account affected by such decisions shall be suspended and payment thereof withheld until the Comptroller of the Treasury shall approve, disapprove, or modify such decisions and certify his actions to the Auditor. All decisions made by the Comptroller of the Treasury under this Act shall be forthwith transmitted to the Auditor or Auditors whose duties are affected thereby.

Disbursing officers, or the head of any Executive Department, or other establishment not under any of the Executive Departments, may apply for and the Comptroller of the Treasury shall render his decision upon any question involving a payment to be made by them or under them, which decision, when rendered, shall govern the Auditor and the Comptroller of the Treasury in passing upon the account containing said disbursement.

Sections one hundred and ninety-one and two hundred and seventy of the Revised Statutes are repealed.

Sec. 9. This Act, so far as it relates to the First Comptroller of the Treasury and the several Auditors and Deputy Auditors of the Treasury,

shall be held and construed to operate merely as changing their designations and as adding to and modifying their duties and powers, and not as creating new officers.

All laws not inconsistent with this Act, relating to the Auditors of the Treasury in connection with any matter, shall be understood in each case to relate to the Auditor to whom this Act assigns the business of the Executive Department or other establishments concerned in that matter.

Sec. 10. The Division of Warrants, Estimates, and Appropriations in the office of the Secretary of the Treasury is hereby recognized and established as the Division of Bookkeeping and Warrants. It shall be under the Direction of the Secretary of the Treasury as heretofore. Upon the books of this division shall be kept all accounts of receipts and expenditures of public moneys except those relating to the postal revenues and expenditures therefrom; and section three hundred and thirteen and so much of sections two hundred and eighty-three and thirty-six hundred and seventy-five of the Revised Statutes as require those accounts to be kept by certain Auditors and the Register of the Treasury are repealed. The duties of the Register of the Treasury shall be such as are now required of him in connection with the public debt and such further duties as may be prescribed by the Secretary of the Treasury.

Sec. 11. Every requisition for an advance of money, before being acted on by the Secretary of the Treasury, shall be sent to the proper Auditor for action thereon as required by section twelve of this Act.

All warrants, when authorized by law and signed by the Secretary of the Treasury, shall be countersigned by the Comptroller of the Treasury, and all warrants for the payment of money shall be accompanied either by the Auditor's certificate, mentioned in section seven of this Act, or by the requisition for advance of money, which certificate or requisition shall specify the particular appropriation to which the same should be charged, instead of being specified on the warrant, as now provided by section thirty-six hundred and seventy-five of the Revised Statutes; and shall also go with the warrant to the Treasurer, who shall return the certificate or requisition to the proper Auditor, with the date and amount of the draft issued indorsed thereon. Requisitions for the payment of money on all audited accounts, or for covering money into the Treasury, shall not hereafter be required. And requisitions for advances of money shall not be countersigned by the Comptroller of the Treasury.

Section two hundred and sixty-nine and so much of section three hundred and five of the Revised Statutes as requires the Register of the Treasury to record warrants is repealed.

Sec. 12. All monthly accounts shall be mailed or otherwise sent to the proper officer at Washington within ten days after the end of the month to which they relate, and quarterly and other accounts within twenty days after the period to which they relate, and shall be transmitted to and received by the Auditors within twenty days of their actual receipt at the proper office in Washington in the case of monthly, and sixty days in the case of quarterly and other accounts. Should there be any delinquency in this regard at the time of the receipt by the Auditor of a requisition for an advance of money, he shall disapprove the requisition, which he may also do for other reasons arising out of the condition of the officer's accounts for whom the advance is requested; but the Secretary of the Treasury may overrule the Auditor's

decision as to the sufficiency of these latter reasons: *Provided*, That the Secretary of the Treasury shall prescribe suitable rules and regulations, and may make orders in particular cases, relaxing the requirement of mailing or otherwise sending accounts, as aforesaid, within ten days or twenty days or waiving delinquency, in such cases only in which there is, or is likely to be, a manifest physical difficulty in complying with the same, it being the purpose of this provision to require the prompt rendition of accounts without regard to the mere convenience of the officers, and to forbid the advance of money to those delinquent in rendering them: *Provided further*, That should there be a delay by the administrative Departments beyond the aforesaid twenty or sixty days in transmitting accounts, an order of the President in the particular case shall be necessary to authorize the advance of money requested: *And provided further*, That this section shall not apply to accounts of the postal revenue and expenditures therefrom, which shall be rendered as now required by law.

The Secretary of the Treasury shall, on the first Monday of January in each year, make report to Congress of such officers as are then delinquent in the rendering of their accounts or in the payment of balances found due from them for the last preceding fiscal year. Sections two hundred and fifty and two hundred and seventy-two of the Revised Statutes are repealed.

Section thirty-six hundred and twenty-two of the Revised Statutes is amended by striking therefrom the following words: "The Secretary of the Treasury may, if in his opinion the circumstances of the case justify and require it, extend the time hereinbefore prescribed for the rendition of accounts."

Sec. 13. Before transmission to the Department of the Treasury, the accounts of district attorneys, assistant attorneys, marshals, commissioners, clerks, and other officers of the courts of the United States, except consular courts, made out and approved as required by law, and accounts relating to prisoners convicted or held for trial in any court of the United States, and all other accounts relating to the business of the Department of Justice or of the courts of the United States other than consular courts, shall be sent with their vouchers to the Attorney-General and examined under his supervision.

Judges receiving salaries from the Treasury of the United States shall be paid monthly by the disbursing officer of the Department of Justice, and to him all certificates of nonabsence or of the cause of absence of judges in the Territories shall be sent. Interstate Commerce Commissioners and other officers, now paid as judges are, shall be paid monthly by the proper disbursing officer or officers.

Sec. 14. In the case of claims presented to an Auditor which have not had an administrative examination, the Auditor shall cause them to be examined by two of his subordinates independently of each other.

Sec. 15. It shall be the duty of the Secretary of the Treasury annually to lay before Congress, on the first day of the regular session thereof, an accurate, combined statement of the receipts and expenditures during the last preceding fiscal year of all public moneys, including those of the Post Office Department, designating the amount of the receipts, whenever practicable, by ports, districts, and States, and the expenditures, by each separate head of appropriation.

Sec. 16. In section three hundred and seven of the Revised Statutes the words "Secretary of the Treasury" are substituted for the words "Register of the Treasury."

Sec. 17. The transcripts from the books and proceedings of the Department of the Treasury, provided for in section eight hundred and eighty-six of the Revised Statutes, shall hereafter be certified by the Secretary or an Assistant Secretary of the Treasury, and the copies of contracts and other papers therein provided for shall be certified by the Auditor having the custody of such papers.

Sec. 18. Section thirty-seven hundred and forty-three of the Revised Statutes is amended to read as follows:

"Sec. 3743. All contracts to be made, by virtue of any law, and requiring the advance of money, or in any manner connected with the settlement of public accounts, shall be deposited promptly in the offices of the Auditors of the Treasury, according to the nature of the contracts: *Provided*, That this section shall not apply to the existing laws in regard to the contingent funds of Congress."

Sec. 19. Section twenty-six hundred and thirty-nine of the Revised Statutes is amended by substituting the words "proper Auditor" for the words "Commissioner of Customs."

Sec. 20. It shall be the duty of the collectors of customs and other officers of customs to the transmit, with their accounts, to the officers charged with the settlement of their accounts, all such papers, records, or copies thereof relating to their transactions as officers of customs as the Secretary of the Treasury may direct.

THE BUDGET AND ACCOUNTING ACT

1921—Act of June 10, 1921 (42 Stat. L., 20)—An Act To provide a national budget system and an independent audit of Government accounts and for other purposes.

Section 1. This Act may be cited as the "Budget and Accounting Act, 1921."

Sec. 2. When used in this Act—

The terms "department and establishment" and "department or establishment" mean any executive department, independent commission, board, bureau, office, agency, or other establishment of the Government, including the municipal government of the District of Columbia, but do not include the Legislative Branch of the Government or the Supreme Court of the United States;

* * * *

TITLE III—GENERAL ACCOUNTING OFFICE

Sec. 301. There is created an establishment of the Government to be known as the General Accounting Office, which shall be independent of the executive departments and under the control and direction of the Comptroller General of the United States. The offices of Comptroller of the Treasury and Assistant Comptroller of the Treasury are abolished, to take effect July 1, 1921. All other officers and employees of the office of the Comptroller of the Treasury shall become officers and employees in the General Accounting Office at their grades and salaries on July 1, 1921, and all books, records, documents, papers, furniture, office equipment and other

property of the office of the Comptroller of the Treasury shall become the property of the General Accounting Office. The Comptroller General is authorized to adopt a seal for the General Accounting Office.

Sec. 302. There shall be in the General Accounting Office a Comptroller General of the United States and an Assistant Comptroller General of the United States, who shall be appointed by the President with the advice and consent of the Senate, and shall receive salaries of \$10,000 and \$7500 a year, respectively. The Assistant Comptroller General shall perform such duties as may be assigned to him by the Comptroller General, and during the absence or incapacity of the Comptroller General, or during a vacancy in that office, shall act as Comptroller General.

Sec. 303. Except as hereinafter provided in this section, the Comptroller General and the Assistant Comptroller General shall hold office for fifteen years. The Comptroller General shall not be eligible for reappointment. The Comptroller General or the Assistant Comptroller General may be removed at any time by joint resolution of Congress after notice and hearing, when, in the judgment of Congress, the Comptroller General or Assistant Comptroller General has become permanently incapacitated or has been inefficient, or guilty of neglect of duty, or of malfeasance in office, or of any felony or conduct involving moral turpitude, and for no other cause and in no other manner except by impeachment. Any Comptroller General or Assistant Comptroller General removed in the manner herein provided shall be ineligible for reappointment to that office. When a Comptroller General or Assistant Comptroller General attains the age of seventy years, he shall be retired from his office.

Sec. 304. All powers and duties now conferred or imposed by law upon the Comptroller of the Treasury or the six auditors of the Treasury Department, and the duties of the Division of Bookkeeping and Warrants of the Office of the Secretary of the Treasury relating to keeping the personal ledger accounts of disbursing and collecting officers, shall, so far as not inconsistent with this Act, be vested in and imposed upon the General Accounting Office and be exercised without direction from any other officer. The balances certified by the Comptroller General shall be final and conclusive upon the executive branch of the Government. The revision by the Comptroller General of settlements made by the six auditors shall be discontinued, except as to settlements made before July 1, 1921.

The administrative examination of the accounts and vouchers of the Postal Service now imposed by law upon the Auditor for the Post Office Department shall be performed on and after July 1, 1921, by a bureau in the Post Office Department to be known as the Bureau of Accounts, which is hereby established for that purpose. The Bureau of Accounts shall be under the direction of a Comptroller, who shall be appointed by the President with the advice and consent of the Senate, and shall receive a salary of \$5000 a year. The Comptroller shall perform the administrative duties now performed by the Auditor for the Post Office Department and such other duties in relation thereto as the Postmaster General may direct. The appropriation of \$5000 for the salary of the Auditor for the Post Office Department for the fiscal year 1922 is transferred and made available for the salary of the Comptroller, Bureau of Accounts, Post Office Department. The officers and employees of the Office of the Auditor for the Post Office Department engaged in the administrative examination of accounts shall become officers and employees of the Bureau of Accounts at their

grades and salaries on July 1, 1921. The appropriations for salaries and for contingent and miscellaneous expenses and tabulating equipment for such office for the fiscal year 1922, and all books, records, documents, papers, furniture, office equipment, and other property shall be apportioned between, transferred to, and made available for the Bureau of Accounts and the General Accounting Office, respectively, on the basis of duties transferred.

Sec. 305. Section 236 of the Revised Statutes is amended to read as follows:

"Sec. 236. All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office."

Sec. 306. All laws relating generally to the administration of the departments and establishments shall, so far as applicable, govern the General Accounting Office. Copies of any books, records, papers, or documents, and transcripts from the books and proceedings of the General Accounting Office, when certified by the Comptroller General or the Assistant Comptroller General under its seal, shall be admitted as evidence with the same effect as the copies and transcripts referred to in sections 882 and 886 of the Revised Statutes.

Sec. 307. The Comptroller General may provide for the payment of accounts or claims adjusted and settled in the General Accounting Office, through disbursing officers of the several departments and establishments, instead of by warrant.

Sec. 308. The duties now appertaining to the Division of Public Moneys of the Office of the Secretary of the Treasury, so far as they relate to the covering of revenues and repayments into the Treasury, the issue of duplicate of more than \$5000 a year, shall be made in accordance with the payment, shall be performed by the Division of Bookkeeping and Warrants of the Office of the Secretary of the Treasury.

Sec. 309. The Comptroller General shall prescribe the forms, systems, and procedure for administrative appropriation and fund accounting in the several departments and establishments, and for the administrative examination of fiscal officers' accounts and claims against the United States.

Sec. 310. The offices of the six auditors shall be abolished, to take effect July 1, 1921. All other officers and employees of these offices except as otherwise provided herein shall become officers and employees of the General Accounting Office at their grades and salaries on July 1, 1921. All books, records, documents, papers, furniture, office equipment, and other property of these offices, and of the Division of Bookkeeping and Warrants, so far as they relate to the work of such division transferred by section 304, shall become the property of the General Accounting Office. The General Accounting Office shall occupy temporarily the rooms now occupied by the office of the Comptroller of the Treasury and the six auditors.

Sec. 311 (a) The Comptroller General shall appoint, remove, and fix the compensation of such attorneys and other employees in the General Accounting Office as may from time to time be provided for by law.

(b) All such appointments, except to positions carrying a salary at a rate of more than \$5000 a year, shall be made in accordance with the civil service laws and regulations.

(c) No person appointed by the Comptroller General shall be paid a salary at a rate of more than \$6000 a year, and not more than four persons shall be paid a salary at a rate of more than \$5000 a year.

(d) All officers and employees of the General Accounting Office, whether transferred thereto or appointed by the Comptroller General, shall perform such duties as may be assigned to them by him.

(e) All official acts performed by such officers or employees specially designated therefor by the Comptroller General shall have the same force and effect as though performed by the Comptroller General in person.

(f) The Comptroller General shall make such rules and regulations as may be necessary for carrying on the work of the General Accounting Office, including rules and regulations concerning the admission of attorneys to practice before such office.

Sec. 312. (a) The Comptroller General shall investigate, at the seat of government or elsewhere, all matters relating to the receipt, disbursement, and application of public funds, and shall make to the President when requested by him, and to Congress at the beginning of each regular session, a report in writing of the work of the General Accounting Office, containing recommendations concerning the legislation he may deem necessary to facilitate the prompt and accurate rendition and settlement of accounts and concerning such other matters relating to the receipt, disbursement, and application of public funds as he may think advisable. In such regular report, or in special reports at any time when Congress is in session, he shall make recommendations looking to greater economy or efficiency in public expenditures.

(b) He shall make such investigations and reports as shall be ordered by either House of Congress or by any committee of either House having jurisdiction over revenue, appropriations, or expenditures. The Comptroller General shall also, at the request of any such committee, direct assistants from his office to furnish the committee such aid and information as it may request.

(c) The Comptroller General shall specially report to Congress every expenditure or contract made by any department or establishment in any year in violation of law.

(d) He shall submit to Congress reports upon the adequacy and effectiveness of the administrative examination of accounts and claims in the respective departments and establishments and upon the adequacy and effectiveness of departmental inspection of the offices and accounts of fiscal officers.

(e) He shall furnish such information relating to expenditures and accounting to the Bureau of the Budget as it may request from time to time.

Sec. 313. All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them; and the Comptroller General, or any of his assistants or employees, when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment. The authority contained in this section shall not be applicable to expenditures made under the provisions of section 291 of the Revised Statutes.

Sec. 314. The Civil Service Commission shall establish an eligible register for accountants for the General Accounting Office, and the examinations of applicants for entrance upon such register shall be based upon questions approved by the Comptroller General.

Sec. 315. (a) All appropriations for the fiscal year ending June 30, 1922, for the offices of the Comptroller of the Treasury and the six auditors, are transferred to and made available for the General Accounting Office, except as otherwise provided herein.

(b) During such fiscal year the Comptroller General, within the limit of the total appropriations available for the General Accounting Office, may make such changes in the number and compensation of officers and employees appointed by him or transferred to the General Accounting Office under this Act as may be necessary.

(c) There shall also be transferred to the General Accounting Office such portions of the appropriations for rent and contingent and miscellaneous expenses, including allotments for printing and binding made for the Treasury Department for the fiscal year ending June 30, 1922, as are equal to the amounts expended from similar appropriations during the fiscal year ending June 30, 1921, by the Treasury Department for the offices of the Comptroller of the Treasury and the six auditors.

(d) During the fiscal year ending June 30, 1922, the appropriations and portions of appropriations referred to in this section shall be available for salaries and expenses of the General Accounting Office, including payment for rent in the District of Columbia, traveling expenses, the purchase and exchange of law books, books of reference, and for all necessary miscellaneous and contingent expenses.

Sec. 316. The General Accounting Office and the Bureau of Accounts shall not be construed to be a bureau or office created since January 1, 1916, so as to deprive employees therein of the additional compensation allowed civilian employees under the provisions of section 6 of the Legislative, Executive, and Judicial Appropriation Act for the fiscal year ending June 30, 1922, if otherwise entitled thereto.

Sec. 317. The provisions of law prohibiting the transfer of employees of executive departments and independent establishments until after service of three years shall not apply during the fiscal year ending June 30, 1922, to the transfer of employees to the General Accounting Office.

Sec. 318. That Act shall take effect upon its approval by the President: *Provided*, That sections 301 to 317, inclusive, relating to the General Accounting Office and the Bureau of Accounts, shall take effect July 1, 1921.

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