

### **119. How are executive departments and agencies created?**

Executive departments must be created by statute. Agencies in the executive branch, however, may be created by statute, internal departmental reorganizations, or, in some instances, by Presidential directive. Deriving from the constitutional capacity as Chief Executive, Commander in Chief, or by delegation of authority by Congress, the President can create various agencies or units by Executive order. All agencies, however, must ultimately be given a statutory authority if they are to receive appropriations or their decisions are to have legal force.

### **120. How are executive departments and agencies funded?**

Most depend on annual appropriations passed by Congress. In some cases, though, the appropriation is permanent and requires no annual action by Congress. Certain agencies also operate from revenue received when loans are repaid and from nonappropriated funds such as money received from theaters, post exchanges on military bases, or recreation fees on national park lands.

### **121. Who oversees the operations of executive departments and agencies?**

Oversight of the executive departments is shared among the three branches of Government. It is exercised by Congress as a consequence of its constitutional authority to enact laws, appropriate funds, and make rules for the Government. Overseers monitor departmental administration and operations and review past activities, in order to ensure compliance with legislative intent. Congressional oversight is conducted largely through the committees and subcommittees of the Senate and the House of Representatives. These panels are assisted by their own staff and congressional support agencies, such as the General Accounting Office and the Congressional Research Service.

The Federal courts also exert a degree of control over the executive departments through judgments as to the legality of actions or orders compelling compliance with the laws.

Within the executive branch, the President, of course, exercises control over departments and the agencies through their heads, as well as through the Office of Management and Budget.

**122. Why is there a merit system for Federal employees?**

The Federal merit system was established to ensure that any personnel actions, such as hiring, promotion, demotion, or firing, are taken on the basis of an individual's ability and performance. It replaced the "spoils system" whereby political patronage controlled hiring and firing practices. By contrast, the merit system is designed to ensure that the best candidates are hired for Federal positions, that they will be treated fairly, and that they will have the opportunity to rise as far as their abilities take them. Nine merit principles have been codified into law. Two of these are that selection and advancement for Federal positions be on the basis of ability, knowledge, and skills, under fair and open competition; and that personnel management be conducted without regard to politics, race, color, religion, national origin, sex, marital status, age, or handicapping condition, but with regard to individual privacy and constitutional rights.

**123. Are all Federal employees covered by a merit system?**

More than 90 percent of Federal employees are covered by the merit system. Of this total, 59 percent are in the competitive service, 23 percent are in the U.S. Postal Service, and 8 percent are in other merit systems. Among those positions excepted from the competitive service by law, Executive order, or Office of Personnel Management determination, are those which are of a confidential or policy-determining nature, and those for which it is not practical to recruit through competitive examinations or through the competitive Civil Service System.

**124. What are the roles of the Office of Personnel Management, the Merit Systems Protection Board, and the Federal Labor Relations Authority?**

The Civil Service Reform Act of 1978 created three separate agencies to replace the U.S. Civil Service Commission. The Office of Personnel Management (OPM) is the central personnel agency for the Federal Government. Among other responsibilities, it advises the President on civilian employment matters; executes, administers, and enforces civil service laws, rules, and regulations; and provides leadership and assistance to Federal agencies in carrying out Federal personnel policies. The Merit Systems Protection Board (MSPB) is a quasi-judicial agency designed to protect the integrity of the Federal merit system against prohibited personnel practices. The Federal Labor Relations Authority (FLRA) adjudicates labor-management disputes in Federal agencies. It is responsible for conducting hearings and deciding complaints of unfair labor practices. An Office of Special Counsel (OSC), which until 1989 was part of MSPB, but is now an independent, is an investigative and prosecutorial agency charged with protecting employees from prohibited personnel practices, especially reprisal for whistleblowing.