

rience, knowledge, and ability for Indians who may be appointed, without regard to civil-service laws, to the various positions maintained, now or hereafter, by the Indian Office, in the administration of functions or services affecting any Indian tribe. Such qualified Indians shall hereafter have the preference to appointment to vacancies in any such positions.

(June 18, 1934, ch. 576, § 12, 48 Stat. 986.)

#### CODIFICATION

Section was formerly classified to section 472 of this title prior to editorial reclassification and renumbering as this section.

#### TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

#### CONVERSION TO CAREER APPOINTMENT

Status of Indian appointed to Federal service under excepted appointment to be converted to career appointment in competitive service after three years of continuous service and satisfactory performance, see section 5323(m) of this title.

### **§ 5117. Indian preference laws applicable to Bureau of Indian Affairs and Indian Health Service positions**

#### **(a) Establishment of retention categories for purposes of reduction-in-force procedures**

For purposes of applying reduction-in-force procedures under subsection (a) of section 3502 of title 5 with respect to positions within the Bureau of Indian Affairs and the Indian Health Service, the competitive and excepted service retention registers shall be combined, and any employee entitled to Indian preference who is within a retention category established under regulations prescribed under such subsection to provide due effect to military preference shall be entitled to be retained in preference to other employees not entitled to Indian preference who are within such retention category.

#### **(b) Reassignment of employees other than to positions in higher grades; authority to make determinations respecting**

(1) The Indian preference laws shall not apply in the case of any reassignment within the Bureau of Indian Affairs or within the Indian Health Service (other than to a position in a higher grade) of an employee not entitled to Indian preference if it is determined that under the circumstances such reassignment is necessary—

(A) to assure the health or safety of the employee or of any member of the employee's household;

(B) in the course of a reduction in force; or

(C) because the employee's working relationship with a tribe has so deteriorated that the employee cannot provide effective service for such tribe or the Federal Government.

(2) The authority to make any determination under subparagraph (A), (B), or (C) of paragraph

(1) is vested in the Secretary of the Interior with respect to the Bureau of Indian Affairs and the Secretary of Health and Human Services with respect to the Indian Health Service, and, notwithstanding any other provision of law, the Secretary involved may not delegate such authority to any individual other than a Deputy Secretary or Assistant Secretary of the respective department.

#### **(c) Waiver of applicability in personnel actions; scope, procedures, etc.**

(1) Notwithstanding any provision of the Indian preference laws, such laws shall not apply in the case of any personnel action respecting an applicant or employee not entitled to Indian preference if each tribal organization concerned grants, in writing, a waiver of the application of such laws with respect to such personnel action.

(2) The provisions of section 8336(j) of title 5 shall not apply to any individual who has accepted a waiver with respect to a personnel action pursuant to paragraph (1) of this subsection or to section 2011(f)<sup>1</sup> of this title.

#### **(d) Placement of non-Indian employees in other Federal positions; assistance of Office of Personnel Management; cooperation of other Federal agencies**

The Office of Personnel Management shall provide all appropriate assistance to the Bureau of Indian Affairs and the Indian Health Service in placing non-Indian employees of such agencies in other Federal positions. All other Federal agencies shall cooperate to the fullest extent possible in such placement efforts.

#### **(e) Definitions**

For purposes of this section—

(1) The term "tribal organization" means—

(A) the recognized governing body of any Indian tribe, band, nation, pueblo, or other organized community, including a Native village (as defined in section 1602(c) of title 43); or

(B) in connection with any personnel action referred to in subsection (c)(1) of this section, any legally established organization of Indians which is controlled, sanctioned, or chartered by a governing body referred to in subparagraph (A) of this paragraph and which has been delegated by such governing body the authority to grant a waiver under such subsection with respect to such personnel action.

(2) The term "Indian preference laws" means section 5116 of this title or any other provision of law granting a preference to Indians in promotions and other personnel actions.

(3) The term "Bureau of Indian Affairs" means (A) the Bureau of Indian Affairs and (B) all other organizational units in the Department of the Interior directly and primarily related to providing services to Indians and in which positions are filled in accordance with the Indian preference laws.

(Pub. L. 96-135, § 2, Dec. 5, 1979, 93 Stat. 1057; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 100-581, title II, § 205, Nov. 1, 1988, 102

<sup>1</sup> See References in Text note below.

Stat. 2940; Pub. L. 101-509, title V, §529 [title I, §112(c)], Nov. 5, 1990, 104 Stat. 1427, 1454; Pub. L. 105-362, title VIII, §801(e), title XIII, §1302(d), Nov. 10, 1998, 112 Stat. 3288, 3294.)

## REFERENCES IN TEXT

Section 2011(f) of this title, referred to in subsec. (c)(2), was in the original a reference to section 1131 of the Education Amendments of 1978, Pub. L. 95-561, meaning section 1131 of Pub. L. 95-561 prior to the general amendments of chapter 22 (§2000 et seq.) of this title by Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3979, and Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2007. As added by Pub. L. 107-110, section 1131 of Pub. L. 95-561 relates to policy for Indian control of Indian education and is classified to section 2011 of this title. Provisions relating to waivers of education personnel actions are now contained in section 2012(f) of this title.

## CODIFICATION

Section was formerly classified to section 472a of this title prior to editorial reclassification and renumbering as this section.

## AMENDMENTS

1998—Subsec. (d). Pub. L. 105-362, §801(e)(3), struck out par. (1) designation and struck out par. (2) which read as follows: “The Secretaries of the Interior and Health and Human Services, and the Director of the Office of Personnel Management shall each submit a report to Congress following the close of each fiscal year with respect to the actions which they took in such fiscal year to place non-Indian employees of the Bureau of Indian Affairs and the Indian Health Service in other Federal positions.”

Pub. L. 105-362, §801(e)(1), (2), redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows: “The Secretaries of the Interior and Health and Human Services shall each submit to the Congress a report following the close of each fiscal year with respect to the actions which they took in such fiscal year to recruit and train Indians to qualify such Indians for positions which are subject to preference under the Indian preference laws. Such report shall also include information as to the grade levels and occupational classifications of Indian and non-Indian employees in the Bureau of Indian Affairs and the Indian Health Service.”

Subsec. (e). Pub. L. 105-362, §1302(d), which directed the amendment of subsec. (e) by striking out par. (1) designation after “(e)” and striking out par. (2), could not be executed because par. (1) designation did not immediately follow “(e)” subsequent to amendment by Pub. L. 105-362, §801(e)(2). See above.

Pub. L. 105-362, §801(e)(2), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 105-362, §801(e)(2), redesignated subsec. (f) as (e).

1990—Subsec. (b)(2). Pub. L. 101-509 substituted “a Deputy Secretary” for “an Under Secretary” before “or Assistant Secretary”.

1988—Subsec. (c)(1). Pub. L. 100-581 substituted “an applicant or employee” for “an employee”.

## CHANGE OF NAME

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” in subsec. (b)(2) pursuant to section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

## EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on first day of first pay period beginning on or after Nov. 5, 1990, with continued service by incumbent Under Secretary of the Interior, see section 529 [title I, §112(e)(1), (2)(B)] of Pub. L. 101-509, set out as a note under section 3404 of Title 20, Education.

## § 5118. Application generally

The provisions of this Act shall not apply to any of the Territories, colonies, or insular possessions of the United States, except that sections 9, 10, 11, 12, and 16 [25 U.S.C. 5112, 5113, 5115, 5116, 5123] shall apply to the Territory of Alaska: *Provided*, That sections 4, 7, 16, 17, and 18 of this Act [25 U.S.C. 5107, 5110, 5123, 5124, 5125] shall not apply to the following-named Indian tribes, the members of such Indian tribes, together with members of other tribes affiliated with such named tribes located in the State of Oklahoma, as follows: Cheyenne, Arapaho, Apache, Comanche, Kiowa, Caddo, Delaware, Wichita, Osage, Kaw, Otoe, Tonkawa, Pawnee, Ponca, Shawnee, Ottawa, Quapaw, Seneca, Wyandotte, Iowa, Sac and Fox, Kickapoo, Pottawatomie, Cherokee, Chickasaw, Choctaw, Creek, and Seminole. Section 4 of this Act [25 U.S.C. 5107] shall not apply to the Indians of the Klamath Reservation in Oregon.

(June 18, 1934, ch. 576, §13, 48 Stat. 986; Pub. L. 101-301, §3(b), May 24, 1990, 104 Stat. 207.)

## REFERENCES IN TEXT

This Act, referred to in text, is act June 18, 1934, ch. 576, 48 Stat. 984, popularly known as the Indian Reorganization Act, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5101 of this title and Tables.

## CODIFICATION

Section was formerly classified to section 473 of this title prior to editorial reclassification and renumbering as this section.

## AMENDMENTS

1990—Pub. L. 101-301 substituted “sections 4,” for “sections 2, 4,” in proviso.

## ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

## § 5119. Application to Alaska

Sections 5101, 5108, 5110, 5111, 5121, 5124, and 5129 of this title shall after May 1, 1936, apply to the Territory of Alaska: *Provided*, That groups of Indians in Alaska not recognized prior to May 1, 1936, as bands or tribes, but having a common bond of occupation, or association, or residence within a well-defined neighborhood, community, or rural district, may organize to adopt constitutions and bylaws and to receive charters of incorporation and Federal loans under sections 5113, 5123, and 5124 of this title.

(May 1, 1936, ch. 254, §1, 49 Stat. 1250.)

## CODIFICATION

Section was formerly classified to section 362 of Title 48, Territories and Insular Possessions, prior to transfer to section 473a of this title and editorial reclassification and renumbering as this section.

## ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan.