

2004—Subsecs. (b), (c). Pub. L. 108-375 added subsec. (b) and redesignated former subsec. (b) as (c).

1996—Subsec. (a). Pub. L. 104-106 made technical correction to directory language of Pub. L. 103-337, §1632. See 1994 Amendment note below.

1994—Pub. L. 103-337, §1662(c)(2), renumbered section 593 of this title as this section.

Subsec. (a). Pub. L. 103-337, §1675(b), substituted “12213, or 12214” for “3352, or 8352”.

Pub. L. 103-337, §1632, as amended by Pub. L. 104-106, substituted “reserve officers in commissioned grades of lieutenant colonel and commander or below” for “Reserves in commissioned grades below lieutenant colonel and commander” and “reserve officers in commissioned grades above lieutenant colonel and commander” for “Reserves in commissioned grades above major and lieutenant commander”.

1980—Subsec. (a). Pub. L. 96-513 inserted reference to section 624 of this title.

1971—Subsec. (a). Pub. L. 92-129 substituted “below lieutenant colonel and commander” for “below general officer and flag officer”, “in commissioned grades above major and lieutenant commander” for “as general and flag officers”, and “section 3352 or 8352 of this title” for “section 3352 of this title”.

1958—Subsec. (a). Pub. L. 85-861 inserted “, except as provided in section 3352 of this title” after “consent of the Senate”.

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE OF 2004 AMENDMENT**

Amendment by Pub. L. 108-375 effective on the first day of the first month beginning more than 180 days after Oct. 28, 2004, see section 501(g) of Pub. L. 108-375, set out as a note under section 531 of this title.

**EFFECTIVE DATE OF 1996 AMENDMENT**

Amendment by Pub. L. 104-106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103-337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104-106, set out as a note under section 113 of this title.

**EFFECTIVE DATE OF 1994 AMENDMENT**

Amendment by sections 1662(c)(2) and 1675(b)(1) of Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, and amendment by section 1632 of Pub. L. 103-337 effective Oct. 1, 1996, see section 1691 of Pub. L. 103-337, set out as a note under section 10001 of this title.

**EFFECTIVE DATE OF 1980 AMENDMENT**

Amendment by Pub. L. 96-513 effective Sept. 15, 1981, see section 701 of Pub. L. 96-513, set out as a note under section 101 of this title.

**INDEFINITE APPOINTMENTS FOR CERTAIN RESERVE OFFICERS**

Act Aug. 10, 1956, ch. 1041, §41, 70A Stat. 636, provided that: “Each person who was a reserve officer on July 9, 1952, and who did not hold an appointment for an indefinite term on that date, shall be given an appointment for an indefinite term in place of the appointment he then held, if after written notification by competent authority before July 2, 1953, the officer agrees in writing to have that appointment continued for an indefinite term. In the event such officer does not agree in writing, the term of his current appointment shall not be changed by this section.”

**Executive Documents**

**DELEGATION OF FUNCTIONS**

For assignment of functions of President under first sentence of subsec. (a) of this section, see sections 1(b) and 2(b) of Ex. Ord. No. 13358, Sept. 28, 2004, 69 F.R. 58797, set out as a note under section 301 of Title 3, The President.

**§ 12204. Commissioned officers: original appointment; limitation**

(a) No person may be appointed as a Reserve in a commissioned grade above major or lieutenant commander, unless—

(1) he was formerly a commissioned officer of an armed force; or

(2) such an appointment is recommended by a board of officers convened by the Secretary concerned.

(b) This section does not apply to adjutants general and assistant adjutants general of the several States, Puerto Rico, and the District of Columbia.

(Aug. 10, 1956, ch. 1041, 70A Stat. 25, §594; Pub. L. 100-456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; renumbered §12204, Pub. L. 103-337, div. A, title XVI, §1662(c)(2), Oct. 5, 1994, 108 Stat. 2990; Pub. L. 109-163, div. A, title X, §1057(a)(2), Jan. 6, 2006, 119 Stat. 3440.)

**HISTORICAL AND REVISION NOTES**

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
594(a) .....	50:941(c) (less 1st 21 words).	July 9, 1952, ch. 608 §217(c), 66 Stat. 487.
594(b) .....	50:941(c) (1st 21 words).	

In subsection (a), the words “unless \* \* \* he was formerly” are substituted for the words “has not held an appointment as”. The words “or any component thereof” are omitted as surplusage.

**Editorial Notes**

**AMENDMENTS**

2006—Subsec. (b). Pub. L. 109-163 struck out “and Territories” after “States”.

1994—Pub. L. 103-337 renumbered section 594 of this title as this section.

1988—Subsec. (b). Pub. L. 100-456 struck out “the Canal Zone,” after “Puerto Rico,”.

**§ 12205. Commissioned officers: appointment; educational requirement**

(a) **IN GENERAL.**—No person may be appointed to a grade above the grade of first lieutenant in the Army Reserve, Air Force Reserve, or Marine Corps Reserve or to a grade above the grade of lieutenant (junior grade) in the Navy Reserve, or be federally recognized in a grade above the grade of first lieutenant as a member of the Army National Guard or Air National Guard, unless that person has been awarded a baccalaureate degree by a qualifying educational institution.

(b) **EXCEPTIONS.**—Subsection (a) does not apply to the following:

(1) The appointment to or recognition in a higher grade of a person who is appointed in or assigned for service in a health profession for which a baccalaureate degree is not a condition of original appointment or assignment.

(2) The appointment in the Navy Reserve or Marine Corps Reserve of a person appointed for service as an officer designated as a limited duty officer.

(3) The appointment in the Navy Reserve of a person appointed for service under the Naval Aviation Cadet (NAVCAD) program or the Seaman to Admiral program.

(4) The appointment to or recognition in a higher grade of any person who was appointed to, or federally recognized in, the grade of captain or, in the case of the Navy, lieutenant before October 1, 1995.

(5) Recognition in the grade of captain or major in the Alaska Army National Guard of a person who resides permanently at a location in Alaska that is more than 50 miles from each of the cities of Anchorage, Fairbanks, and Juneau, Alaska, by paved road and who is serving in a Scout unit or a Scout supporting unit.

(c) QUALIFYING EDUCATIONAL INSTITUTIONS.—(1) A qualifying educational institution for purposes of this section is an educational institution that is accredited or that meets the requirements of paragraph (2).

(2)(A) An unaccredited educational institution shall be considered to be a qualifying educational institution for purposes of the appointment or recognition of a person who is a graduate of that institution if the Secretary concerned determines that (as of the year of the graduation of that person from that institution) at least three educational institutions that are accredited and that maintain Reserve Officers' Training Corps programs each generally grant baccalaureate degree credit for completion of courses of the unaccredited institution equivalent to the baccalaureate degree credit granted by the unaccredited institution for the completion of those courses.

(B) In order to assist the Secretary concerned in making determinations under subparagraph (A), any unaccredited institution that seeks to be considered to be a qualifying educational institution for purposes of this paragraph shall submit to the Secretary of Defense each year such information as the Secretary may require concerning the program of instruction at that institution.

(C) In the case of a person with a degree from an unaccredited institution that is a qualifying educational institution under this paragraph, the degree may not have been awarded more than eight years before the date on which the person is to be appointed to, or recognized in, the grade of captain or, in the case of the Navy Reserve, lieutenant, in order for that person to be considered for purposes of subsection (a) to have been awarded a baccalaureate degree by a qualifying educational institution.

(d) WAIVER AUTHORITY FOR ARMY OCS GRADUATES AND CERTAIN MARINE CORPS OFFICERS.—(1) The Secretary of the Army may waive the applicability of subsection (a) to any officer whose original appointment in the Army as a Reserve officer is through the Army Officer Candidate School program.

(2) The Secretary of the Navy may waive the applicability of subsection (a) to any officer whose original appointment in the Marine Corps as a Reserve officer is through the Marine Corps meritorious commissioning program.

(3) Any such waiver shall be made on a case-by-case basis, considering the individual circumstances of the officer involved, and may continue in effect for no more than two years after the waiver is granted. The Secretary concerned may provide for such a waiver to be effective be-

fore the date of the waiver, as appropriate in an individual case.

(Added Pub. L. 102-484, div. A, title V, §515(a), Oct. 23, 1992, 106 Stat. 2406, §596; renumbered §12205 and amended Pub. L. 103-337, div. A, title V, §§519, 520, title XVI, §1662(c)(2), Oct. 5, 1994, 108 Stat. 2755, 2990; Pub. L. 104-201, div. A, title V, §§504, 505, title X, §1074(a)(22), Sept. 23, 1996, 110 Stat. 2512, 2660; Pub. L. 107-107, div. A, title V, §512(a), Dec. 28, 2001, 115 Stat. 1092; Pub. L. 109-163, div. A, title V, §515(b)(1)(KK), Jan. 6, 2006, 119 Stat. 3234.)

#### Editorial Notes

##### PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 102-190, div. A, title V, §523, Dec. 5, 1991, 105 Stat. 1363, which was set out as a note under section 591 [now 12201] of this title, prior to repeal by Pub. L. 103-35, §203(a).

##### AMENDMENTS

2006—Subsecs. (a), (b)(2), (3), (c)(2)(C). Pub. L. 109-163 substituted "Navy Reserve" for "Naval Reserve".

2001—Subsec. (d). Pub. L. 107-107 added subsec. (d).

1996—Subsec. (a). Pub. L. 104-201, §1074(a)(22), substituted "No person" for "After September 30, 1995, no person".

Subsec. (b)(3). Pub. L. 104-201, §505, inserted "or the Seaman to Admiral program" after "(NAVCAD) program".

Subsec. (c)(2)(C). Pub. L. 104-201, §504, substituted "eight years" for "three years".

1994—Pub. L. 103-337, §1662(c)(2), renumbered section 596 of this title as this section.

Subsec. (a). Pub. L. 103-337, §519(1), substituted "a qualifying educational institution" for "an accredited educational institution".

Subsec. (b)(2), (3). Pub. L. 103-337, §520(b), substituted "a person" for "an individual".

Subsec. (b)(5). Pub. L. 103-337, §520(a), added par. (5).

Subsec. (c). Pub. L. 103-337, §519(2), added subsec. (c).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-107, div. A, title V, §512(b), Dec. 28, 2001, 115 Stat. 1092, provided that: "Subsection (d) of section 12205 of title 10, United States Code, as added by subsection (a), shall apply with respect to officers appointed before, on, or after the date of the enactment of this Act [Dec. 28, 2001]."

##### AUTHORITY FOR TEMPORARY WAIVER FOR CERTAIN ARMY RESERVE OFFICERS OF BACCALAUREATE DEGREE REQUIREMENT FOR PROMOTION OF RESERVE OFFICERS

Pub. L. 105-261, div. A, title V, §516, Oct. 17, 1998, 112 Stat. 2008, provided that:

"(a) WAIVER AUTHORITY FOR ARMY OCS GRADUATES.—The Secretary of the Army may waive the applicability of section 12205(a) of title 10, United States Code, to any officer who before the date of the enactment of this Act [Oct. 17, 1998] was commissioned through the Army Officer Candidate School. Any such waiver shall be made on a case-by-case basis, considering the individual circumstances of the officer involved, and may continue in effect for no more than 2 years after the waiver is granted. The Secretary may provide for such a waiver to be effective before the date of the waiver, as appropriate in an individual case.

"(b) EXPIRATION OF AUTHORITY.—A waiver under this section may not be granted after September 30, 2000."

#### § 12206. Commissioned officers: appointment of former commissioned officers

Under regulations prescribed by the Secretary of Defense, a person who is a former commis-