

§ 309. Federal recognition of National Guard officers: officers promoted to fill vacancies

Each officer of the National Guard who is promoted to fill a vacancy in a federally recognized unit of the National Guard, and who has been on the reserve active-status list or the active-duty list of the Army or the Air Force for at least one year and has completed the minimum years of service in grade specified in section 14303 of title 10, shall be examined for Federal recognition in the grade to which the officer is promoted.

(Added Pub. L. 85-861, §2(7), Sept. 2, 1958, 72 Stat. 1543; amended Pub. L. 103-337, div. A, title XVI, §1630(1), Oct. 5, 1994, 108 Stat. 2963.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
309	50:1251.	Sept. 3, 1954, ch. 1257, §319, 68 Stat. 1160.

The words “authorized under section 1227(a) of this title” are omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103-337 substituted “National Guard officers: officers” for “officers: Army National Guard; officers” in section catchline and amended text generally. Prior to amendment, text read as follows: “Each officer of the Army National Guard who is promoted to fill a vacancy in a federally recognized unit thereof, and who is eligible for promotion under section 3363(b) of title 10, shall be examined for Federal recognition in the grade to which he is promoted. However, a second lieutenant or first lieutenant of the Army National Guard who has served creditably for at least one year in a position prescribed to be filled by a captain, and who has not previously been federally recognized under this section, may be examined for Federal recognition in the next higher grade without regard to section 3363(b) of title 10.”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Oct. 1, 1996, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

SUSPENSION OF THIS SECTION

For authority of the President to suspend this section in time of war or emergency declared by Congress, see section 111 of this title.

§ 310. Federal recognition of National Guard officers: automatic recognition

(a)(1) Notwithstanding sections 307 and 309 of this title, if a second lieutenant of the National Guard is promoted to the grade of first lieutenant to fill a vacancy in a federally recognized unit in the National Guard, Federal recognition is automatically extended to that officer in the grade of first lieutenant, effective as of the date on which that officer has completed the service in the grade specified in section 14303(a)(1) of title 10 and has met such other requirements as prescribed by the Secretary concerned under section 14308(b) of that title, if the officer has remained in an active status since the officer was so recommended.

(2) Notwithstanding sections 307 and 309 of this title, if a warrant officer, W-1, of the National Guard is promoted to the grade of chief warrant officer, W-2, to fill a vacancy in a federally recognized unit in the National Guard, Federal recognition is automatically extended to that officer in the grade of chief warrant officer, W-2, effective as of the date on which that officer has completed the service in the grade prescribed by the Secretary concerned under section 12242 of title 10, if the warrant officer has remained in an active status since the warrant officer was so recommended.

(b) Notwithstanding sections 307 and 309 of this title, if an officer of the Army Reserve or the Air Force Reserve in a reserve grade above second lieutenant is appointed in the next higher grade in the National Guard to fill a vacancy in a federally recognized unit in the National Guard, Federal recognition is automatically extended to that officer in the grade in which the officer is so appointed in the National Guard if the officer has been recommended for promotion under chapter 1405 of title 10 and has remained in an active status since the officer was so recommended. The extension of Federal recognition under this subsection is effective as of the date when the officer is appointed in the National Guard.

(Added Pub. L. 85-861, §2(7), Sept. 2, 1958, 72 Stat. 1544; amended Pub. L. 103-337, div. A, title XVI, §1630(1), Oct. 5, 1994, 108 Stat. 2964; Pub. L. 112-239, div. A, title V, §512, Jan. 2, 2013, 126 Stat. 1718.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
310(a)	50:1252 (less (2)).	Sept. 3, 1954, ch. 1257, §320, 68 Stat. 1160.
310(b)	50:1252(2).	

In subsections (a) and (b), the words “federally recognized” are inserted for clarity.

In subsection (a), the words “or the date of the promotion, whichever is later” are omitted as inconsistent with section 3820(c) of title 10, requiring the discharge of each second lieutenant who is not promoted by the time he has three years of service. (See opinion of the Judge Advocate General of the Army (JAGA 1957/1019, Jan. 7, 1957).)

AMENDMENTS

2013—Subsec. (a). Pub. L. 112-239 designated existing provisions as par. (1) and added par. (2).

1994—Pub. L. 103-337 substituted “National Guard officers:” for “officers: Army National Guard;” in section catchline and amended text generally. Prior to amendment, text read as follows:

“(a) Notwithstanding sections 307 and 309 of this title, if a second lieutenant of the Army National Guard is promoted to the grade of first lieutenant to fill a vacancy in a federally recognized unit thereof, Federal recognition is automatically extended to him in the grade of first lieutenant, effective as of the date on which he completes three years of service computed under section 3360(a) of title 10.

“(b) Notwithstanding sections 307 and 309 of this title, if an officer of the Army Reserve in a reserve grade above second lieutenant is appointed in the next higher grade in the Army National Guard to fill a vacancy in a federally recognized unit thereof, Federal recognition is automatically extended to him in the grade in which he is so appointed in the Army National Guard, if he has been recommended for promotion to the grade concerned under section 3366, 3367, 3370, or 3383 of title 10 and has remained in an active status since he was so recommended. The extension of Federal recognition under this subsection is effective as of the date when the officer is appointed in the Army National Guard.”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103-337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

SUSPENSION OF THIS SECTION

For authority of the President to suspend this section in time of war or emergency declared by Congress, see section 111 of this title.

§ 312. Appointment oath

Each person who is appointed as an officer of the National Guard shall subscribe to the following oath:

“I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of _____ against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the President of the United States and of the Governor of the State of _____, that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of _____ in the National Guard of the State of _____ upon which I am about to enter, so help me God.”

(Aug. 10, 1956, ch. 1041, 70A Stat. 603.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
312	32:112.	June 3, 1916, ch. 134, §73 (1st par.); restated June 15, 1933, ch. 87, §11 (1st par.), 48 Stat. 157; July 9, 1952, ch. 608, §806(c), 66 Stat. 507.

The words “Each person who is appointed as an” are inserted for clarity.

§ 313. Appointments and enlistments: age limitations

(a) To be eligible for original enlistment in the National Guard, a person must be at least 17 years of age and under 45, or under 64 years of age and a former member of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps. To be eligible for reenlistment, a person must be under 64 years of age.

(b) To be eligible for appointment as an officer of the National Guard, a person must—

- (1) be a citizen of the United States; and
- (2) be at least 18 years of age and under 64.

(Aug. 10, 1956, ch. 1041, 70A Stat. 604; Pub. L. 85-861, §2(9), Sept. 2, 1958, 72 Stat. 1544; Pub. L. 90-130, §2(2), Nov. 8, 1967, 81 Stat. 383.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
313(a)	32:4 (less 22 words before proviso).	June 3, 1916, ch. 134, §58; restated Feb. 28, 1925, ch. 371, §1 (1st par.); restated June 15, 1933, ch. 87, §5 (1st par.), 48 Stat. 155; June 19, 1935, ch. 277, §2, 49 Stat. 391; June 28, 1947, ch. 162, §7 (less applicability to §57 of the Act of June 3, 1916, ch. 134), 61 Stat. 192; July 9, 1952, ch. 608, §§803 (8th par.), 806(j), 66 Stat. 505, 508.
313(b)	32:4 (22 words before proviso).	

In subsection (a), 32:4 (1st 19 words) is omitted as covered by section 101(3) and (5) of this title. 32:4 (54th through 62d words) is omitted as surplusage. The words “under 64” are substituted for the words “not more than sixty-four” to conform to an opinion of the Judge Advocate General of the Army (JAGA 1953/9033, 3 Dec. 1953). The word “Regular” is inserted before the words “Navy” and “Marine Corps”. The words “Regular Air Force” are inserted to complete the coverage of the revised section. The word “reenlistment” is substituted for the words “subsequent enlistment”.

1958 ACT

Section of title 32	Source (U.S. Code)	Source (Statutes at Large)
313(b)	32 App.:4 (as applicable to age).	July 30, 1956, ch. 789, §2 (as applicable to age), 70 Stat. 729.

AMENDMENTS

1967—Subsec. (b)(3). Pub. L. 90-130 struck out cl. (3) which inserted requirement that women appointed with a view to serving as a nurse or medical specialist be at least 21 years of age and under 64 years of age in order to be eligible for appointment as an officer of the National Guard.

1958—Subsec. (b). Pub. L. 85-861 inserted qualifications for appointment of women with a view to serving as nurses or medical specialists.

§ 314. Adjutants general

(a) There shall be an adjutant general in each State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands. He shall perform the duties prescribed by the laws of that jurisdiction.

(b) The President shall appoint the adjutant general of the District of Columbia and prescribe his grade and qualifications.

(c) The President may detail as adjutant general of the District of Columbia any retired commissioned officer of the Regular Army or the Regular Air Force recommended for that detail by the commanding general of the District of Columbia National Guard. An officer detailed under this subsection is entitled to the basic pay and allowances of his grade.

(d) The adjutant general of each State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands, and officers of the National Guard, shall make such returns and reports as the Secretary of the Army or the Secretary of the Air Force may prescribe, and shall make those returns and reports to the Secretary concerned or to any officer designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 604; Pub. L. 85-894, Sept. 2, 1958, 72 Stat. 1713; Pub. L. 100-456,