

## Future of Space Force Reserve and Guard Forces

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1.8: USERRA and Other Laws

2.0: Paid Leave

### Background

The 2022 National Defense Authorization Act (NDAA) directed the Secretary of Defense to “conduct a study to determine the appropriate role and organization of space-related assets within the reserve components of the Armed Forces.”<sup>3</sup> This report, due March 31, 2022 was required to discuss the organization of space-related units in the reserve components of the Armed Forces, including the costs of establishing a Space National Guard.<sup>4</sup>

Ultimately, the proposal delivered to Congress suggested an entirely new approach to reserve forces that would provide for both full-time and part-time options for Guardians.<sup>5</sup> Both full and part-time Guardians would be members of one singular component of the space force, so there would not be a separate reserve component.<sup>6</sup> This proposal however did not provide for a National Guard component of the Space Force.<sup>7</sup> The proposal argued that this unique approach to reserve forces would allow the Space Force to best recruit and retain space expertise in the increasingly competitive private sector.<sup>8</sup>

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<sup>1</sup> I invite the reader’s attention to [www.roa.org/lawcenter](http://www.roa.org/lawcenter). You will find approximately 1500 “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA) and other laws that are especially pertinent to those who serve our country, along with a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997. In our “state laws” section, we have an article for each state about the state laws that grant paid military leave and other benefits, over and above USERRA, to employees of the state and (often) to employees of the state’s political subdivisions.

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<sup>3</sup> National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, § 913, 135 Stat. 402.

<sup>4</sup> *Id.*

<sup>5</sup> *No Space Guard in New Pentagon Proposal to Congress*, NGAUS, <https://www.ngaus.org/newsroom/no-space-guard-new-pentagon-proposal-congress>. (last visited Feb. 1, 2023)

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

Following up on this proposal, the 2023 NDAA, signed into law by President Biden on December 23, 2022, required the Secretary of Defense to submit another report detailing how the Space Force would transition to a single component.<sup>9</sup> The report is to include details on how Guardians would be permitted to transfer between duty statuses, how retirement and promotions would be determined, and other logistical considerations.

Despite the passage of this bill, Congress is not “all-in” on the idea of having both part-time and full-time Guardians in lieu of a Space National Guard. In fact, despite what passed in the NDAA, in May, Senators Rubio (R-FL) and Feinstein (D-CA) introduced a bill to create a Space National Guard.<sup>10</sup> Their argument for the creation of a Space National Guard is the existence of 14 Air National Guard units with space-related missions.<sup>11</sup> These units are home to about 2,000 personnel in California, Alaska, Arkansas, Hawaii, Florida, Colorado, Ohio, New York, and Guam.<sup>12</sup>

Prior to the signing of the 2023 NDAA, the White House Office of Management and Budget issued a statement “strongly oppos[ing]” the creation of a Space Guard, claiming it would increase yearly costs by up to \$500 million.

### **March 2023 Secretary of Defense Report**

While the full Secretary of Defense Report is not yet available, the Chief of Space Operations, General B. Chance Saltzman, provided a written statement before the Senate Armed Services Subcommittee on Strategic Forces on March 14, 2023. This statement included the following discussion of the Space Force’s approach to talent management:

With Congressional support, we will improve our modern talent management system by integrating the Air Force Reserve space element into the Space Force as a single component. This will strengthen our recruiting and retention efforts by providing unique, flexible career paths. The proposed talent management system update would allow Guardians to transfer between full-time and part-time duty to pursue opportunities outside full-time military service and subsequently return to full-time duty without barriers to reentry or detriment to their career. Part-time Guardians would bring valuable commercial industry experience back to the Space Force. Such opportunities will help us attract highly skilled, technologically inclined people in an increasingly competitive space enterprise talent market. The single service personnel management system will allow Guardians to achieve their potential and drive innovation within the Space Force. The system will also make retaining highly qualified Guardians easier by facilitating flexible career paths. We look forward to working with this committee on this important initiative.

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<sup>9</sup> James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263.

<sup>10</sup> Thomas Novelly, *Nominee for Top Space Force Job Grilled over National Guard*, MILITARY.COM (Sep. 13, 2022), <https://www.military.com/daily-news/2022/09/13/nominee-top-space-force-job-grilled-over-national-guard.html>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

We will continue to keep you updated on the future development of the Space Force Reserve and Auxiliary Forces.

### **Please join or support ROA**

This article is one of 2,300-plus “Law Review” articles available at [www.roa.org/lawcenter](http://www.roa.org/lawcenter). The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is more than a century old—it was established on 10/1/1922 by a group of veterans of “The Great War,” as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For almost a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Through these articles, and by other means, including amicus curiae (“friend of the court”) briefs that we file in the Supreme Court and other courts, we educate service members, military spouses, attorneys, judges, employers, DOL investigators, ESGR volunteers, congressional and state legislative staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation’s eight<sup>13</sup> uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20 or \$450 for a life membership. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at [www.roa.org](http://www.roa.org) or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

Reserve Organization of America  
1 Constitution Ave. NE  
Washington, DC 20002<sup>14</sup>

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<sup>13</sup> Congress recently established the United States Space Force as the 8<sup>th</sup> uniformed service.

<sup>14</sup> You can also contribute on-line at [www.roa.org](http://www.roa.org).

