SEC. ___. REVISION TO CERTAIN DEFINITIONS RELATING TO FAMILIES OF SERVICEMEMBERS FOR PURPOSES OF FAMILY AND MEDICAL LEAVE.

(a) DEFINITIONS APPLICABLE UNDER FAMILY AND MEDICAL LEAVE ACT OF 1993.—

(1) DEFINITION OF "COVERED ACTIVE DUTY".—Paragraph (14) of section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611) is amended—

(A) by striking "to a foreign country" in subparagraphs (A) and (B); and

(B) by inserting ", 12301(d), or 12301(g)" after "section 101(a)(13)(B)" in subparagraph (B).

(2) DEFINITION OF "COVERED SERVICEMEMBER".—Paragraph (15)(A) of such section is amended by inserting "inpatient or" before "outpatient status".

(b) DEFINITIONS APPLICABLE TO LEAVE FOR CIVIL SERVICE EMPLOYEES.—

(1) DEFINITION OF "COVERED ACTIVE DUTY".—Paragraph (7) of section 6381 of title 5, United States Code, is amended—

(A) by striking "to a foreign country" in subparagraph (A) and (B); and

(B) by inserting ", 12301(d), or 12301(g)" after "section 101(a)(13)(B)" in subparagraph (B).

(2) DEFINITION OF "COVERED SERVICEMEMBER".—Paragraph (8)(A) of such section is amended by inserting "inpatient or" before "outpatient status".

(3) TECHNICAL AMENDMENT.—Paragraph (7)(B) of such section is further amended by striking ", United States Code".

Section-by-Section Analysis

This proposal would modify the definitions of “covered active duty” and “covered service member” as they appear in section 101 of the Family Medical and Leave Act (FMLA) of 1993 and in 5 U.S.C. 6381 (as those sections were amended by section 585 of the National Defense Authorization Act for Fiscal Year 2008 and further amended by section 565 of the National Defense Authorization Act for Fiscal Year 2010) to correct oversights in current FMLA protections. Expanding the definitions of “covered active duty” and “covered service member” will help leadership “keep the faith” with the families of our service members which will help maintain a competitive edge in recruiting and retaining the best talent in the Nation.

As currently written, the definition of “covered active duty” does not apply to active duty members who are stationed or deployed within the US or its territories, yet who may be afloat or at remote locations, or to Reserve Component members on 10 U.S.C. 12301(d) orders (order to active duty with the consent of the member) or 12301(g) orders (captive status). The families of members performing active duty under these authorities should not be excluded from FMLA protections.

As currently written, the definition of "covered service member" does not specifically apply to service members who are in an inpatient status. For example, individuals with traumatic brain injury may always be inpatient and never move to an outpatient status.

Budget Implications: Leave pursuant to FMLA authorities is not paid leave, so this proposal has no cost to the Department. FMLA leave is a benefit for the families of service members who meet certain status requirements and therefore this proposal will not affect the members of the services.

Changes to Existing Law: This proposal would make the following changes to section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611) and 5 U.S.C. 6381:

FAMILY AND MEDICAL LEAVE ACT OF 1993

SEC. 101. DEFINITIONS.

As used in this title:

(1) ***

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(14) COVERED ACTIVE DUTY.—The term “covered active duty” means—

(A) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces ~~to a foreign country~~; and

(B) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces ~~to a foreign country~~ under a call or order to active duty under a provision of law referred to in section**s** 101(a)(13)(B)<u>, 12301(d), or 12301(g)</u> of title 10, United States Code.

(15) COVERED SERVICEMEMBER.—The term 'covered servicemember' means—

(A) a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in inpatient or outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or

(B) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

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TITLE 5, UNITED STATES CODE

§ 6381. Definitions

For the purpose of this subchapter—

(1) ***

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(7) the term "covered active duty" means—

(A) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces ~~to a foreign country~~; and

(B) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces ~~to a foreign country~~ under a call or order to active duty under a provision of law referred to in sections 101(a)(13)(B), 12301(d), or 12301(g) of title 10~~, United States Code~~.

(8) the term 'covered servicemember' means—

(A) a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in inpatient or outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or

(B) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.