SEC. ___. TECHNICAL AND CLERICAL AMENDMENTS RELATING TO 2008 CONSOLIDATION OF CERTAIN SPECIAL PAY AUTHORITIES.

(a) FAMILY CARE PLANS.—Section 586 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 991 note) is amended by inserting "or 351" after "section 310".

(b) DEPENDENTS' MEDICAL CARE.—Section 1079(g)(1) of title 10, United States Code, is amended by inserting "or 351" after "section 310".

(c) RETENTION ON ACTIVE DUTY DURING DISABILITY EVALUATION PROCESS.—Section 1218(d)(1) of title 10, United States Code, is amended by inserting "or 351" after "section 310".

(d) STORAGE SPACE.—Section 362(1) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 10 U.S.C. 2825 note) is amended by inserting ", or paragraph (1) or (3) of section 351(a)," after "section 310".

(e) STUDENT ASSISTANCE PROGRAMS.—Sections 455(o)(3)(B) and 465(a)(2)(D) of the Higher Education Act of 1965 (20 U.S.C. 1087e(o)(3)(B), 1087ee(a)(2)(D)) are amended by inserting "or paragraph (1) or (3) of section 351(a)." after "section 310".

(f) ARMED FORCES RETIREMENT HOME.—Section 1512(a)(3)(A) of the Armed Forces Retirement Home Act of 1991 (24 U.S.C. 412(a)(3)(A)) is amended by inserting "or 351" after "section 310".

(g) VETERANS OF FOREIGN WARS MEMBERSHIP.—Section 230103(3) of title 36, United States Code, is amended by inserting "or 351" after "section 310".

(h) MILITARY PAY AND ALLOWANCES.—Title 37, United States Code, is amended—

(1) in section 212(a), by inserting “, or paragraph (1) or (3) of section 351(a),” after “section 310”;

(2) in section 402a(b)(3)(B), by inserting “or 351” after “section 310”;

(3) in section 481a(a), by inserting “or 351” after “section 310”;

(4) in section 907(d)(1)(H), by inserting “or 351” after “section 310”; and

(5) in section 910(b)(2)(B), by inserting “, or paragraph (1) or (3) of section 351(a),” after “section 310”.

(i) EXCLUSIONS FROM INCOME FOR PURPOSE OF SUPPLEMENTAL SECURITY INCOME.—Section 1612(b)(20) of the Social Security Act (42 U.S.C. 1382a(b)(20)) is amended by inserting “, or paragraph (1) or (3) of section 351(a),” after “section 310”.

(j) EXCLUSIONS FROM INCOME FOR PURPOSE OF HEAD START PROGRAM.—Section 645(a)(3)(B)(i) of the Head Start Act (42 U.S.C. 9840(a)(3)(B)(i)) is amended by inserting “or 351” after “section 310”.

(k) EXCLUSIONS FROM GROSS INCOME FOR FEDERAL INCOME TAX PURPOSES.—Section 112(c)(5)(B) of the Internal Revenue Code of 1986 is amended by inserting “, or paragraph (1) or (3) of section 351(a),” after “section 310”.

Section-by-Section Analysis

This proposal would make technical and clerical corrections to titles 10, 14, 20, 24, 36, 37, and 42, United States Code, as part of the Department's transition to the "consolidated authorities" described in Section 661 of the National Defense Authorization Act for Fiscal Year 2008, which provided eight consolidated statutory special and incentive pay authorities for future use to replace those currently in use.

This proposal is consistent in format and intent with technical corrections included each year in the annual NDAA. The proposal would make no substantive change in existing law, but would correct referring citations to reflect recent developments.

Budget Implications: This proposal would not have any budgetary implications for the Department of Defense.

Changes to Existing Law: This proposal would make the following changes to existing law:

1. SECTION 586 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2008 (Public Law 110-181)

SEC. 586. [10 U.S.C. 991 note] FAMILY CARE PLANS AND DEFERMENT OF DEPLOYMENT OF SINGLE PARENT OR DUAL MILITARY COUPLES WITH MINOR DEPENDENTS.

The Secretary of Defense shall establish appropriate procedures to ensure that an adequate family care plan is in place for a member of the Armed Forces with minor dependents who is a single parent or whose spouse is also a member of the Armed Forces when the member may be deployed in an area for which imminent danger pay is authorized under section 310 **or 351** of title 37, United States Code. Such procedures should allow the member to request a deferment of deployment due to unforeseen circumstances, and the request for such a deferment should be considered and responded to promptly.

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2. TITLE 10, UNITED STATES CODE

§ 1079. Contracts for medical care for spouses and children

(a) ***

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(g)(1) When a member dies while he is eligible for receipt of hostile fire pay under section 310 **or 351** of title 37 or from a disease or injury incurred while eligible for such pay, his dependents who are receiving benefits under a plan covered by subsection (d) shall continue to be eligible for such benefits until they pass their twenty-first birthday.

* * * * * * *

§ 1218. Discharge or release from active duty: claims for compensation, pension, or hospitalization

(a) ***

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(d)(1) The Secretary of a military department shall ensure that each member of a reserve component under the jurisdiction of the Secretary who is determined, after a mobilization and

deployment to an area in which imminent danger pay is authorized under section 310 **<u>or 351</u>** of title 37, to require evaluation for a physical or mental disability which could result in separation or retirement for disability under this chapter or placement on the temporary disability retired list or inactive status list under this chapter is retained on active duty during the disability evaluation process until such time as such member is—

(A) cleared by appropriate authorities for continuation on active duty; or

(B) separated, retired, or placed on the temporary disability retired list or inactive status list.

* * * * * * *

3. SECTION 362 OF NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2007 (Public Law 109-364)

SEC. 362. [10 U.S.C. 2825 note] PROVISION OF ADEQUATE STORAGE SPACE TO SECURE PERSONAL PROPERTY OUTSIDE OF ASSIGNED MILITARY FAMILY HOUSING UNIT.

The Secretary of a military department shall ensure that a member of the Armed Forces under the jurisdiction of the Secretary who occupies a unit of military family housing is provided with adequate storage space to secure personal property that the member is unable to secure within the unit whenever—

(1) the member is assigned to duty in an area for which special pay under section 310**<u>, or paragraph (1) or (3) of section 351(a),</u>** of title 37, United States Code, is available and the assignment is pursuant to orders specifying an assignment of 180 days or more; and

(2) the dependents of the member who otherwise occupy the unit of military family housing are absent from the unit for more than 30 consecutive days during the period of the assignment of the member.

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4. HIGHER EDUCATION ACT OF 1965

SEC. 455 [20 U.S.C. 1087e] TERMS AND CONDITIONS OF LOANS.

(a) ***

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(o) NO ACCRUAL OF INTEREST FOR ACTIVE DUTY SERVICE MEMBERS.—

(1) ***

* * * * * *

(3) ELIGIBLE MILITARY BORROWER.—In this subsection, the term ‘‘eligible military borrower’’ means an individual who—

(A)(i) is serving on active duty during a war or other military operation or national emergency; or (ii) is performing qualifying National Guard duty during a war or other military operation or national emergency; and

(B) is serving in an area of hostilities in which service qualifies for special pay under section 310 **<u>or paragraph (1) or (3) of section 351(a).</u>** of title 37, United States Code.

* * * * * *

SEC. 465. [20 U.S.C. 1087ee] CANCELLATION OF LOANS FOR CERTAIN PUBLIC SERVICE.

(a) CANCELLATION OF PERCENTAGE OF DEBT BASED ON YEARS OF QUALIFYING SERVICE.—(1) The percent specified in paragraph (3) of this subsection of the total amount of any loan made after June 30, 1972, from a student loan fund assisted under this part shall be canceled for each complete year of service after such date by the borrower under circumstances described in paragraph (2).

(2) Loans shall be canceled under paragraph (1) for service—

(A) as a full-time teacher for service in an academic year (including such a teacher employed by an educational service agency)—

(i) in a public or other nonprofit private elementary school or secondary school, which, for the purpose of this paragraph and for that year—

(I) has been determined by the Secretary (pursuant to regulations of the Secretary and after consultation with the State educational agency of the State in which the school is located) to be a school in which the number of children meeting a measure of poverty under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, exceeds 30 percent of the total number of children enrolled in such school; and

(II) is in the school district of a local educational agency which is eligible in such year for assistance pursuant to part A of title I of the Elementary and Secondary Education Act of 1965; or (ii) in one or more public, or nonprofit private, elementary schools or secondary schools or locations operated by an educational service agency that have been determined by the Secretary (pursuant to regulations of the Secretary and after consultation with the State educational agency of the State in which the educational service agency operates) to be a school or location at which the number of children taught who meet a measure of poverty under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, exceeds 30 percent of the total number of children taught at such school or location; or

(ii) in one or more public, or nonprofit private, elementary schools or secondary schools or locations operated by an educational service agency that have been determined by the Secretary (pursuant to regulations of the Secretary and after consultation with the State educational agency of the State in which the educational service agency operates) to be a school or location at which the

number of children taught who meet a measure of poverty under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, exceeds 30 percent of the total number of children taught at such school or location;

(B) as a full-time staff member in a preschool program carried on under the Head Start Act, or in a prekindergarten or child care program that is licensed or regulated by the State, that is operated for a period which is comparable to a full school year in the locality if the salary of such staff member is not more than the salary of a comparable employee of the local educational agency;

(C) as a full-time special education teacher, including teachers of infants, toddlers, children, or youth with disabilities in a public or other nonprofit elementary or secondary school system, including a system administered by an educational service agency, or as a full-time qualified professional provider of early intervention services in a public or other nonprofit program under public supervision by the lead agency as authorized in section 635(a)(10) of the Individuals with Disabilities Education Act;

(D) as a member of the Armed Forces of the United States, for service that qualifies for special pay under section 310 **or paragraph (1) or (3) of section 351(a)** of title 37, United States Code, as an area of hostilities;

(E) ***

* * * * * * *

5. ARMED FORCES RETIREMENT HOME ACT OF 1991

SEC. 1512. [24 U.S.C. 412] RESIDENTS OF RETIREMENT HOME.

(a) PERSONS ELIGIBLE TO BE RESIDENTS.—Except as provided in subsection (b) of this section, the following persons who served as members of the Armed Forces, at least one-half of whose service was not active commissioned service (other than as a warrant officer or limited-duty officer), are eligible to become residents of the Retirement Home:

(1) Persons who—

(A) are 60 years of age or over; and

(B) were discharged or released from service in the Armed Forces under honorable conditions after 20 or more years of active service.

(2) Persons who are determined under rules prescribed by the Chief Operating Officer to be incapable of earning a livelihood because of a service-connected disability incurred in the line of duty in the Armed Forces.

(3) Persons who—

(A) served in a war theater during a time of war declared by Congress or were eligible for hostile fire special pay under section 310 **or 351** of title 37;

(B) were discharged or released from service in the Armed Forces under honorable conditions; and

(C) are determined under rules prescribed by the Chief Operating Officer to be incapable of earning a livelihood because of injuries, disease, or disability.

(4) ***

* * * * * * *

6. TITLE 36, UNITED STATES CODE

§ 230103. Membership

An individual is eligible for membership in the corporation only if the individual served honorably as a member of the Armed Forces of the United States—

(1) in a foreign war, insurrection, or expedition in service that—

(A) has been recognized as campaign-medal service; and

(B) is governed by the authorization of the award of a campaign badge by the United States Government;

(2) on the Korean peninsula or in its territorial waters for at least 30 consecutive days, or a total of 60 days, after June 30, 1949; or

(3) in an area which entitled the individual to receive special pay for duty subject to hostile fire or imminent danger under section 310 **<u>or 351</u>** of title 37.

* * * * * * *

7. TITLE 37, UNITED STATES CODE

§ 212.Advancement of basic pay: members deployed in combat zone for more than one year

(a) ELIGIBILITY; AMOUNT ADVANCED.—If a member of the armed forces is assigned to duty in an area for which special pay under section 310**<u>, or paragraph (1) or (3) of section 351(a),</u>** of this title is available and the assignment is pursuant to orders specifying an assignment of one year or more (or the assignment is extended beyond one year), the member may request, during the period of the assignment, the advanced payment of not more than three months of the basic pay of the member.

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§ 402a. Supplemental subsistence allowance for low-income members with dependents

(a)***

* * * * * * *

(b) MEMBERS ENTITLED TO ALLOWANCE.— (1) Subject to subsection (d), a member of the armed forces with dependents is entitled to receive the supplemental subsistence allowance if the Secretary concerned determines that the member's income, together with the income of the rest of the member's household (if any), is within the highest income standard of eligibility, as then in effect under section 5(c) of the Food and Nutrition Act of 2008 (7 U.S.C. 2014(c)) and without regard to paragraph (1) of such section, for participation in the supplemental nutrition assistance program.

(2) In determining whether a member meets the eligibility criteria under paragraph (1), the Secretary concerned shall take into consideration the amount of the basic allowance for housing that the member receives under section 403 of this title or would otherwise receive under such section, in the case of a member who is not entitled to that allowance as a result of assignment to quarters of the United States or a housing facility under the jurisdiction of a uniformed service.

(3) In determining whether a member meets the eligibility criteria under paragraph (1), the Secretary concerned shall not take into consideration—

(A) the amount of the supplemental subsistence allowance that is payable under this section;

(B) the amount of any special pay that is payable to the member under section 310 **<u>or 351</u>** of this title, relating to duty subject to hostile fire or imminent danger; or

(C) the amount of any family separation allowance that is payable to the member under section 427 of this title.

* * * * * * *

§ 481a. Travel and transportation allowances: travel performed in connection with convalescent leave

(a) Under uniform regulations prescribed by the Secretaries concerned, a member of a uniformed service is entitled to travel and transportation allowances for travel from his place of medical treatment in the continental United States to a place selected by him and approved by the Secretary concerned, and return, when the Secretary concerned determines that the member is traveling in connection with authorized leave for convalescence from illness or injury incurred while the member was eligible for the receipt of hostile fire pay under section 310 **<u>or 351</u>** of this title.

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§ 907. Enlisted members and warrant officers appointed as officers: pay and allowances stabilized

(a) ***

* * * * * * *

(d)(1) In determining the amount of the pay and allowances of a grade formerly held by an officer, the following special and incentive pays may be considered only so long as the officer continues to perform the duty that creates the entitlement to, or eligibility for, that pay and would otherwise be eligible to receive that pay in the former grade:

(A) Incentive pay for hazardous duty under section 301 of this title.

(B) Submarine duty incentive pay under section 301c of this title.

(C) Special pay for diving duty under section 304 of this title.

(D) Hardship duty pay under section 305 of this title.

(E) Career sea pay under section 305a of this title.

(F) Special pay for service as a member of a Weapons of Mass Destruction Civil Support Team under section 305b of this title.

(G) Assignment incentive pay under section 307a of this title.

(H) Special pay for duty subject to hostile fire or imminent danger under section 310 **<u>or 351</u>** of this title.

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§ 910. Replacement of lost income: involuntarily mobilized reserve component members subject to extended and frequent active duty service

(a) ***

* * * * * * *

(b) ELIGIBILITY.—(1) A member of a reserve component is entitled to a payment under this section for any full month of active duty of the member, when the total monthly military compensation of the member is less than the average monthly civilian income of the member, while the member is on active duty under an involuntary mobilization order, following the date on which the member—

(A) completes 547 continuous days of service on active duty under an involuntary mobilization order;

(B) completes 730 cumulative days on active duty under an involuntary mobilization order during the previous 1,826 days; or

(C) is involuntarily mobilized for service on active duty for a period of 180 days or more within 180 days after the date of the member's separation from a previous period of active duty for a period of 180 days or more.

(2) The entitlement of a member of a reserve component to a payment under this section also shall commence or, if previously commenced under paragraph (1), shall continue if the member—

(A) satisfies the required number of days on active duty specified in subparagraph (A) or (B) of paragraph (1) or was involuntarily mobilized as provided in subparagraph (C) of such paragraph; and

(B) is retained on active duty under subparagraph (A) or (B) of section 12301(h)(1) of title 10 because of an injury or illness incurred or aggravated while the member was assigned to duty in an area for which special pay under section 310**<u>, or paragraph (1) or (3) of section 351(a),</u>** of this title.

* * * * * * *

8. SOCIAL SECURITY ACT

(42 U.S.C. 1382a(b)(20))

EXCLUSIONS FROM INCOME FOR PURPOSE OF SUPPLEMENTAL SECURITY INCOME

SEC. 1612. [42 U.S.C. 1382a] (a) ***

* * * * * * *

(b) In determining the income of an individual (and his eligible spouse) there shall be excluded—

(1) subject to limitations (as to amount or otherwise) prescribed by the Commissioner of Social Security, if such individual is under the age of 22 and is, as determined by the Commissioner of Social Security, a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful employment, the earned income of such individual;

(2) ***

* * * * * * *

(19) any refund of Federal income taxes made to such individual (or such spouse) by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to such individual (or such spouse) by an employer under section 3507 of such Code (relating to advance payment of earned income credit);

(20) special pay received pursuant to section 310**, or paragraph (1) or (3) of section 351(a),** of title 37;

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9. HEAD START ACT

SEC. 645. [42 U.S.C. 9840] PARTICIPATION IN HEAD START PROGRAM.

(a) CRITERIA FOR ELIGIBILITY.—(1)(A) The Secretary shall by regulation prescribe eligibility for the participation of persons in Head Start programs assisted under this subchapter.

(B) Except as provided in paragraph (2), such regulation shall provide—

(i) that children from low-income families shall be eligible for participation in programs assisted under this subchapter [42 USCS §§ 9831 et seq.] if their families' incomes are below the poverty line, or if their families are eligible or, in the absence of child care, would potentially be eligible for public assistance;

(ii) that homeless children shall be deemed to be eligible for such participation;

(iii) that programs assisted under this subchapter [42 USCS §§ 9831 et seq.] may include--

(I) to a reasonable extent (but not to exceed 10 percent of participants), participation of children in the area served who would benefit from such programs but who are not eligible under clause (i) or (ii); and

(II) from the area served, an additional 35 percent of participants who are not eligible under clause (i) or (ii) and whose families have incomes below 130 percent of the poverty line, if--

(aa) the Head Start agency involved establishes and implements outreach and

enrollment policies and procedures that ensure such agency is meeting the needs of children eligible under clause (i) or (ii) (or subclause (I) if the child involved has a disability) prior to meeting the needs of children eligible under this subclause; and

(bb) in prioritizing the selection of children to be served, the Head Start agency establishes criteria that provide that the agency will serve children eligible under clause (i) or (ii) prior to serving the children eligible under this subclause;

(iv) that any Head Start agency serving children eligible under clause (iii)(II) shall report annually to the Secretary information on--

(I) how such agency is meeting the needs of children eligible under clause (i) or (ii), in the area served, including local demographic data on families of children eligible under clause (i) or (ii);

(II) the outreach and enrollment policies and procedures established by the agency that ensure the agency is meeting the needs of children eligible under clause (i) or (ii) (or clause (iii)(I) if the child involved has a disability) prior to meeting the needs of children eligible under clause (iii)(II);

(III) the efforts, including outreach efforts (that are appropriate to the community involved), of such agency to be fully enrolled with children eligible under clause (i) or (ii);

(IV) the policies, procedures, and selection criteria such agency is implementing to serve eligible children, consistent with clause (iii)(II);

(V) the agency's enrollment level, and enrollment level over the fiscal year prior to the fiscal year in which the report is submitted;

(VI) the number of children served by the agency, disaggregated by whether such children are eligible under clause (i), clause (ii), clause (iii)(I), or clause (iii)(II); and

(VII) the eligibility criteria category of the children on the agency's waiting list;

(v) that a child who has been determined to meet the eligibility criteria described in this subparagraph and who is participating in a Head Start program in a program year shall be considered to continue to meet the eligibility criteria through the end of the succeeding program year.

(C) In determining, for purposes of this paragraph, whether a child who has applied for enrollment in a Head Start program meets the eligibility criteria, an entity may consider evidence of family income during the 12 months preceding the month in which the application is submitted, or during the calendar year preceding the calendar year in which the application is submitted, whichever more accurately reflects the needs of the family at the time of application.

(2) Whenever a Head Start program is operated in a community with a population of 1,000 or less individuals and--

(A) there is no other preschool program in the community;

(B) the community is located in a medically underserved area, as designated by the Secretary pursuant to and is located in a health professional shortage area, as designated by the Secretary pursuant to section 332(a)(1) of such Act [42 USCS § 254e(a)(1)];

(C) the community is in a location which, by reason of remoteness, does not permit reasonable access to the types of services described in clauses (A) and (B); and

(D) not less than 50 percent of the families to be served in the community are eligible under the eligibility criteria established by the Secretary under paragraph (1);

the Head Start program in each such locality shall establish the criteria for eligibility, except that no child residing in such community whose family is eligible under such eligibility criteria shall, by virtue of such project's eligibility criteria, be denied an opportunity to participate in such program. During the period beginning on the date of the enactment of the Human Services Reauthorization Act [enacted Oct. 30, 1984] and ending on October 1, 1994, and unless specifically authorized in any statute of the United States enacted after such date of enactment, the Secretary may not make any change in the method, as in effect on April 25, 1984, of calculating income used to prescribe eligibility for the participation of persons in the Head Start programs assisted under this subchapter [42 USCS §§ 9831 et seq.] if such change would result in any reduction in, or exclusion from, participation of persons in any of such programs.

(3) (A) In this paragraph:

(i) The term "dependent" has the meaning given the term in paragraphs (2)(A) and (4)(A)(i) of section 401(a) of title 37, United States Code.

(ii) The terms "member" and "uniformed services" have the meanings given the terms in paragraphs (23) and (3), respectively, of section 101 of title 37, United States Code.

(B) The following amounts of pay and allowance of a member of the uniformed services shall not be considered to be income for purposes of determining the eligibility of a dependent of such member for programs funded under this subchapter:

(i) The amount of any special pay payable under section 310 **or 351** of title 37, United States Code, relating to duty subject to hostile fire or imminent danger.

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10. Internal Revenue Code of 1986

SEC. 112. CERTAIN COMBAT ZONE COMPENSATION OF MEMBERS OF THE ARMED FORCES.

(a) ***

* * * * * * *

(c) DEFINITIONS.—For purposes of this section—

(1)The term “commissioned officer” does not include a commissioned warrant officer.

(2)The term “combat zone” means any area which the President of the United States by Executive Order designates, for purposes of this section or corresponding provisions of prior income tax laws, as an area in which Armed Forces of the United States are or have (after June 24, 1950) engaged in combat.

(3)Service is performed in a combat zone only if performed on or after the date designated by the President by Executive Order as the date of the commencing of combatant activities in such zone, and on or before the date designated by the President by Executive Order as the date of the termination of combatant activities in such zone; except that June 25, 1950, shall be considered the date of the commencing of combatant

activities in the combat zone designated in Executive Order 10195.

(4)The term “compensation” does not include pensions and retirement pay.

(5)The term “maximum enlisted amount” means, for any month, the sum of—

(A) the highest rate of basic pay payable for such month to any enlisted member of the Armed Forces of the United States at the highest pay grade applicable to enlisted members, and

(B) in the case of an officer entitled to special pay under section 310**, or paragraph (1) or (3) of section 351(a),** of title 37, United States Code, for such month, the amount of such special pay payable to such officer for such month.