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Listening Session Testimony
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Good morning. My name is Dana Montalto. I am a Clinical Instructor at the Veterans Legal Clinic at the Legal Services Center of Harvard Law School, where I provide pro bono representation to veterans in state and federal veterans and military law matters and teach law school students through the actual practice of law.

In this role, I have helped many veterans who received less-than-honorable discharges navigate the character of discharge review process. I have also had the privilege of working on behalf of Swords to Plowshares and the National Veterans Legal Services Program to seek to reform the regulations at 38 C.F.R. 3.12.

This work on behalf of both individuals and veterans organizations led me to dig into the history of VA's other than dishonorable standard that Congress enshrined in law as part of the 1944 GI Bill of Rights. I will share a bit of that history now, which bears directly on question A regarding compelling circumstances; questions B & C regarding the phrasing of certain regulatory bars; and question D1 about VA's mission.

After World War I, our government failed to properly care for returning servicemembers. There was no centralized, comprehensive benefits and health care program to assist World War I veterans in their transition, and as a result, they suffered untreated wounds and mass unemployment. This ultimately led a Bonus Army of tens of thousands of veterans to walk across the country and march on Washington to demand fair and adequate treatment.

While the government eventually agreed to provide some assistance, for many, it was too little, too late. Importantly, many veterans—including those who did not have Honorable discharges—were excluded.

The World War II Era Congress knew of that recent history when, in 1944, it began making a plan for the 16 million returning servicemembers and chose to make an extensive set of

benefits—health care, disability compensation, education, home loans—available to them to help them reintegrate into and succeed in their civilian lives.

Congress thought carefully about whether veterans who did not have fully Honorable discharges (such as those with Other Than Honorable discharges) should be eligible for these benefits and considered a range of options.

In the end, Congress adopted the position proposed by Harry Colmery, former national commander of the American Legion, who originally drafted the 1944 G.I. Bill: that standard was eligibility for all former servicemembers who were discharged under "other than dishonorable" conditions—which expressly can include veterans who received less-than-honorable discharges.

When Congress settled on this standard, it knew about servicemembers who experienced "combat stress" or "shell shock", or who started drinking to deal with war wounds, and who then were kicked out less-than-honorably because of related misconduct. And Congress thought that while it may be appropriate for them not to be in the military anymore, that the government still should care for these veterans.

As Harry Colmery explained: "we use [the language 'under conditions other than dishonorable'] because we are seeking to protect the veteran against injustice . . . we are trying to give the veteran the benefit of the doubt, because we think he is entitled to it."

Some argued against this standard and sought instead to reserve VA benefits only to those with Honorable discharges. But Congress deliberately chose otherwise.

It is important to remember that nearly half of members of Congress at that time had served in uniform. So they made this decision not because they did not understand military life, but instead because they understood it better than most.

This history and the plain text of the "other than dishonorable" standard must inform VA's character of discharge regulations. But the current regulations and proposed rule fail to heed that history and text.

First, on Question A regarding mental impairment, it is notable that in hearings and testimony on the G.I. Bill, Congress did not use the technical language of the psychiatric profession. Rather, they discussed "combat stress" and "shell shock". They referred to behaviors symptomatic of a mental health condition like alcohol and substance use and absences from duty. This broad understanding of mental health and how it manifests in service should be reflected in VA's final rule.

Second, on Questions B & C, before the 1944 G.I. Bill was enacted, certain statutes and regulations barred VA benefits to former servicemembers who were discharged for "any offense involving moral turpitude" or "willful and persistent misconduct, of which he was found guilty by court-martial". With full knowledge of those existing bars, Congress explicitly chose not to include them in the 1944 G.I. Bill; instead, Congress chose a totally new standard—the "other than dishonorable" conditions standard, which was intended as a liberalizing reform that would

expand access. For VA to then reinstate even broader versions of those "moral turpitude" and "willful and persistent misconduct" bars in regulation and used them to exclude veterans for the past decades violates fundamental principles of administrative law and directly contradicts Congress's wishes. Those bars must be removed.

Relatedly, Congress nowhere expressed a desire to limit the consideration of mitigating circumstances to only certain veterans. Indeed, by utilizing the military term of art "dishonorable"—which invokes the balancing of aggravating and mitigating factors inherent in military sentencing determinations—Congress incorporated a requirement that compelling circumstances be factored into all eligibility determinations. Thus, where Question B asks whether a "totality of the circumstances" should be considered, the answer is yes.

Third, and finally, on Question D1, in its debates about the "other than dishonorable" eligibility standard, Congress explained why it thought that VA should make the eligibility determination, not the service branches. Congress saw the military and VA as having different missions: the military had to defend the nation, maintaining good order and discipline; VA must support veterans in their post-service lives. Congress thought that the person deciding whether a veteran should be able to get treatment for the wounds of war should be someone far removed from the heat of battle. Congress deliberately decoupled the military-assigned character of discharge from VA's eligibility determinations because the military is responsible for discipline, whereas VA is responsible for care.

And indeed, I have heard from so many VA staff—including those responsible for health care enrollment, outreach, homelessness prevention, and benefits adjudication—that they truly want to provide care to all who served our country, regardless of discharge status, but feel trapped by the overly restrictive character of discharge regulations currently in place.

And I have seen firsthand the life-changing impact that breaking through these eligibility rules and gaining access to VA's robust, holistic supportive services can have on an individual veteran's life.

You have a unique opportunity to change the lives of so many veterans by reforming these regulations. I ask you to do so to uphold the original intent of the World War II Era Congress who never again wanted to leave a generation of veterans behind.

Thank you to everyone at VA for taking the time now to review and update these regulations and for listening to my testimony today.