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Increasing Housing Stability Through State-Funded Community Mediation Delivered by The Massachusetts Housing Mediation Program (HMP): Evaluation Report

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**Increasing Housing Stability Through
State-Funded Community Mediation
Delivered by The Massachusetts
Housing Mediation Program (HMP)**

Evaluation Report

November 2021

**Massachusetts Office of Public Collaboration
John W. McCormack Graduate School of Policy and Global
Studies
University of Massachusetts, Boston**



Massachusetts Housing Mediation Program

Evaluation Report

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This report presents findings and recommendations from a formative evaluation of the Massachusetts Housing Mediation Program (HMP) administered by the MA Office of Public Collaboration (MOPC) at the University of Massachusetts Boston in partnership with 12 Community Mediation Centers (CMCs). The program is funded by the Commonwealth of Massachusetts and overseen by the Department of Housing and Community Development (DHCD) as part of the Governor's Eviction Diversion Initiative (EDI). The evaluation was conducted by MOPC's research unit comprised of staff and graduate student researchers. As a statutory state office, MOPC has been serving as a neutral forum and state-level resource for over 30 years. Its mission is to establish evidence-based public programs and build capacity within public entities for enhanced conflict resolution and intergovernmental and cross-sector collaboration to save costs for the state and its citizens and enable effective problem-solving and civic engagement on major public initiatives.

This HMP evaluation report is based on a literature review of housing mediation research and evaluations, including summary process and landlord-tenant mediations, and new research conducted through interviews and surveys. In this formative stage, the evaluation seeks a developmental approach to identifying key indicators of success measures from mediation users, practitioners, administrators, and sponsors with a view to answering a set of research questions on the achievement of program goals like the contribution of the mediation program to housing stability as well as mediation party and sponsor satisfaction. Over time, with the potential to expand data collection, the HMP evaluators will also actively seek opportunities to identify the economic impact of housing mediation.

The evaluators would like to acknowledge the efforts of MOPC's HMP program managers, the 12 Community Mediation Centers (CMCs) and DHCD for participating in the collection of valuable data for this report.

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Introduction

The Massachusetts Office of Public Collaboration (MOPC) is an applied research center of the McCormack Graduate School of Policy and Global Studies at the University of Massachusetts Boston and the state dispute resolution agency for the Commonwealth serving the judicial, executive, and legislative branches of state government and municipalities (G.L. Ch. 75, s. 46). MOPC is also the grant program administrator for the state-sponsored community mediation system (G.L. Ch.75, s. 47) deployed to assist courts and public agencies with the design and administration of evidence-based dispute resolution programs for important public issues.

In Fiscal Year 2021, the MA Governor and the Department of Housing & Community Development (DHCD) engaged MOPC to design and administer a comprehensive statewide Housing Mediation Program (HMP) as part of the Administration's Eviction Diversion Initiative (EDI), with funding through the state budget. The HMP utilizes mediation as a homelessness prevention and housing stability tool to help mitigate the costs and negative economic impacts from evictions during the COVID-19 pandemic. The HMP is administered by MOPC with services provided by 12 affiliated Community Mediation Centers (CMCs) covering all 14 counties of the state. HMP services are coordinated with regional housing agencies administering housing programs such as RAFT (Residential Assistance for Families in Transition Program) and ERMA (Emergency Rental and Mortgage Assistance Program), and legal aid organizations serving both tenants and landlords. Free online mediation services are delivered to parties referred by these agencies upstream (that is, before a case is brought to court) as well as parties referred by the court downstream (that is, when a case has been brought to court) prior to and during summary process eviction proceedings.

To assess the impact of the HMP on housing stabilization and homelessness prevention, MOPC deployed a team of staff and graduate student researchers to create data collection and evaluation indicators and metrics vetted by DHCD and the Governor's Office. The team undertook the following activities to produce this evaluation report for the first year of the HMP operations:

1. Conducted an extensive literature review of research studies, academic articles and publications on housing, landlord-tenant, and summary process mediation.
2. Mined data from HMP case intake forms and mediated agreements from 174 cases and analyzed the data.
3. Launched HMP mediation participant survey and collected 47 survey responses from tenants, landlords and lawyers and analyzed the quantitative data.
4. Interviewed 16 HMP mediation participants, including tenants, landlords, lawyers for tenants and landlords, and transcribed and analyzed interview data.
5. Interviewed 10 HMP mediators and 5 HMP case coordinators and transcribed and analyzed qualitative data.
6. Launched HMP mediator survey and a much more detailed mediation session survey and analyzed the quantitative data.
7. Held HMP program administrator and sponsor debriefing interviews.
8. Examined quantitative data in HMP weekly case data sheets (aggregated for the period November 2020- June 2021)

9. Drafted evaluation findings, case studies and recommendations tracked to detailed appendices.

The report is organized into the following sections: *Executive Summary* that can serve as a stand-alone document; *Findings*, based on an investigation of research on housing mediation, landlord-tenant and summary process mediations; *Recommendations*, for further increasing impact, utilization and effectiveness of housing mediation and for ensuring the sustainability of the HMP; *Appendices*, presenting detailed, fully-sourced summaries of the research material; and *Bibliography*, containing a complete list of references.

Executive Summary

Nearly one-third of US households are renters. The number of households that lose their rented home through eviction has grown over the years. Between 2000 and 2016, 61 million eviction cases were filed, and executed evictions increased by more than 70%, reaching nearly 900,000 evicted households in 2016. In Massachusetts, as in the rest of the US, non-payment of rent was the most common reason for eviction. Otherwise, most of the disputes over housing conditions were not brought to court.

Although evictions exacted a toll on both landlords and tenants, the burden of loss fell most heavily on tenants. Indeed, the adverse consequences of eviction permeated the lives of tenants. While landlords and tenants both incurred financial costs, eviction also had a detrimental effect on tenant's opportunities for housing, health, finances, social situation, and an uninterrupted education for their children. Even the filing of an eviction case established a court record, which, while useful to landlords for screening prospective tenants, could impair the tenant's search for new housing. Thus, evicted renters might become homeless, or if they found housing, it was likely to be inferior or more expensive than their former home. While renters were a diverse group overall, the burden of eviction fell most heavily on minorities, women, and the economically disadvantaged. For example, in Boston, MA, the average eviction filing rates for census tracts with most Black renters was 3.8 times greater than for tracts with White renter majorities.

A variety of immediate interventions have been instituted to address the housing crisis caused by evictions. Current efforts to decrease the frequency and impact of evictions have included the suspension of evictions, financial assistance, legal representation and assistance, and diversion programs like mediation, etc. No one of these initiatives have completely resolved the complex problems of eviction and housing instability.

The threat to housing stability posed by the COVID-19 pandemic during the period March 2020 to the present led to government-imposed eviction moratoriums and financial assistance for rent arrears, among other initiatives. As a result of these governmental efforts, the prior upward trend in eviction filings and executions was paused. In Massachusetts in particular, the state set up a \$171 million program to promote housing stability when the state's eviction moratorium expired in October 2020. Legislation was also enacted which sought to suppress evictions during the pandemic by linking judicial actions on residential evictions to the federal eviction moratorium. Consequently, from 2019 to 2020, Massachusetts residential eviction filings and executions decreased by 59% and by 73%, respectively. The current pandemic-related decline in eviction filings and executions is expected to be temporary. As government financial assistance and eviction moratoriums end, evictions are expected to soar.

The evidence for success in promoting housing stability by protecting the legal rights of parties in housing disputes is strongest for legal representation. Generally, in eviction cases, 90% of landlords had legal representation while only 10% of tenants did. Unequal access to legal representation created a power imbalance between parties which favored landlords. As a result of the effectiveness of legal representation in housing disputes, outcomes for tenants experiencing the eviction process were better when they had legal

counsel. A Boston eviction study revealed that twice as many fully represented tenants than unrepresented tenants were allowed to remain in their homes. Despite the evidence of its effectiveness in protecting party rights, the shortage of affordable or free legal services limits reliance on attorney representation for reducing evictions.

Mediation provides an alternative to the courts for the resolution of housing disputes. Unfettered by the protocols and delays of the judicial system, mediation offers flexibility regarding the problems to be addressed as well as the solutions for the problems. Some evidence of mediation's effectiveness was provided by, e.g., a Philadelphia eviction diversion program, which produced agreements in 92% of mediated cases that enabled nearly 70% of tenant defendants to remain in their home. Mediation has been criticized for not addressing the power imbalance between parties caused, in part, by discrepancies in parties' level of relevant knowledge. Tenants facing eviction tend to be lower-income, unaware of their housing rights, and lacking in legal representation. Landlords, by contrast, usually have greater financial resources, court experience, and access to expert assistance than do tenants. The consequences of the imbalance for tenants were illustrated in a study of a year's worth of summary process cases in four Massachusetts District Courts, where a large majority of 72% of renters failed to defend themselves against eviction by neglecting to detail their defenses and counterclaims.

Pre-mediation training of parties in legal matters by non-mediators has been proposed as a means of addressing the imbalance in legal knowledge between parties while protecting the neutrality of mediators. However, a comparison study of the impact of pre-mediation training in affirmative defenses on tenants facing eviction raised questions about the efficacy of this approach. The study showed that not only were the rates for eviction, dismissal, abatement, and adjournment that resulted from mediation with trained tenants not meaningfully different from the rates for untrained mediating tenants, but that the lowest eviction rate and the highest rates for dismissals, abatements, and adjournments were achieved by tenants with legal representation rather than by tenants who mediated or who directly appeared before a judge.

Over the long term, achieving housing stability requires dealing with the root causes of evictions, such as a shortage of affordable housing, financial hardship, reduced job opportunities, inadequate legal rights for renters, systemic injustice, and racism, among others. Remediation of these root causes calls for policy changes and investments of time, energy, and social capital on the part of government and communities. Changes to be considered include expansion of renters' legal rights – such as the expungement or sealing of court eviction records and the establishment of a right to counsel in eviction cases – as well as the deliberate pursuit of equity by eviction intervention programs to eliminate the disparate impact of eviction on communities of color, women with children, and low-income people.

Research literature on housing mediation was examined by MOPC's research and evaluation unit for evidence concerning the effectiveness of housing mediation. In addition, MOPC launched surveys and interviews to collect data from mediation parties, mediators, case coordinators, program administrators and the sponsor DHCD.

MOPC's research found that for landlords and tenants impacted by the pandemic and facing mounting debt and the threat of eviction and housing instability, the Housing Mediation Program (HMP) has been a critical intervention and has had a positive impact both in terms of preserving tenancy/increasing housing stability and mitigating the negative psychological, social, and financial impacts associated with facing eviction and homelessness. This is demonstrated by mixed methods research, including the case studies discussed in the latter sections of this report.

According to data from the decentralized case management database MADtrac, the HMP received 897 referrals of which 505 were screened, resulting in 400 cases and 239 mediations. One hundred thirty-three mediations resulted in tenancy preservations and 41 had a move-out date while 10 mediations preserved subsidies. Of these mediations, 172 resulted in full agreements, which is a 72% settlement rate. This settlement rate is on par with other Massachusetts community mediation program settlement rates.

According to survey results from HMP parties (i.e., tenants, landlords, and lawyers) who participated in housing mediation, respondents overwhelmingly approved of the mediation services they received. The problems of the surveyed individuals were handled to the satisfaction of 93% of the 47 respondents. Ninety-eight percent (98%) indicated that the mediation process was fair to them. And 88% were satisfied with the outcome. The 47 surveyed individuals were unanimous about the clarity of the information they received about mediation.

Most of the 47 surveyed individuals were pleased with the assistance they received from mediators. Mediators' listening skills were acknowledged by an overwhelming majority of the respondents (91% or 43). Large majorities also appreciated mediators' help with identifying and clarifying issues (83%), enabling parties to voice concerns and make their own decisions (83%), and with generating ideas and options (70%). Smaller majorities recognized that mediators assisted with generating new information and helped parties be open to alternative solutions (51% and 60%, respectively).

Though a clear causal link between the housing mediation and housing stability is difficult to determine, several factors can be said to contribute to housing mediation delivered through HMP as an effective tool resulting in the prevention of homelessness and preservation of tenancy. These factors are: 1) the state of the landlord-tenant relationship; 2) parties' interests (whether landlords and/or tenants desire preserving tenancy); and 3) coupling of mediation with rental assistance programs.

A strong correlation exists between housing mediation provided through the HMP and tenancy preservation. For example, an analysis of a sample of 174 written mediated agreements reached between landlords and tenants through housing mediation offered by ten CMCs (out of 12) during the 6-months period from January to June 2021 shows that 118 agreements, a little over two-thirds (68%), resulted in preservation of tenancy.

The coupling of HMP housing mediation with robust financial assistance is a significant factor contributing to tenancy preservation. The quantitative data reveals a strong correlation between RAFT assistance (and other financial assistance) and preservation of tenancy. The provision of financial assistance to landlords and tenants to cover rent arrearages in part or in whole gave relief during the pandemic and helped to resolve landlord-tenant disputes. Filing for RAFT requires the participation of both landlords and tenants and involves a lengthy application process. The data shows that mediation also helped to prevent homelessness because case coordinators and mediators assisted parties during the RAFT application process, especially when communication between parties had broken down or when access to more information was needed for decision-making.

Mediators' reflections on their HMP experience also reveal some of the limitations of housing mediation in addressing the root causes and structural dimensions of the housing crisis that exacerbate the threat of eviction and homelessness. Mediators and case coordinators all agreed that cases mediated under the HMP were typically more complex than traditional pre-COVID summary process or landlord-tenant mediations. The stakes for parties, the frequency and extent of the imbalance of power between parties, and the importance of party knowledge about their rights and defenses were all greater in housing mediation than for other mediated issues according to a majority of HMP mediators. As a result, mediators reported a deepening of their expertise in housing mediation and the relevant technicalities associated with it. Case coordinators reported how they filled gaps in educating parties to navigate the housing crisis and became a "go-to" resource in the community for both landlords and tenants.

Additionally, Community Mediation Centers involved in the HMP in FY21 did not fully reflect the diversity of the populations they serve. Most of the surveyed mediators were under the impression that the general pool of housing mediators failed to reflect the race/ethnicity and socio-economic class of that population.

Housing mediation delivered through the HMP by Community Mediation Centers (CMCs) was underutilized in courts, thereby leaving considerable time and cost efficiencies behind for parties and courts. Interviewed mediators and case coordinators felt that mediation is underutilized in the court system, and that if appropriately utilized, mediation could lead to better outcomes for parties and increased court efficiency, including time and cost savings. Allowing mediation as an option could increase party satisfaction with court, better outcomes for parties, increased court efficiencies and expand the scope of services from the publicly funded HMP and the EDI.

The number of cases referred to HMP was generally lower than initially anticipated. A key assumption made when launching the HMP was that EDI partner agencies, HCECs (Housing Consumer Education Centers) and RAAs (Regional Administering Agencies), would be the main referral agencies to mediation. This assumption did not materialize as anticipated. HCECs, RAAs, and legal aid organizations involved in CELHP (COVID Eviction Legal Help Project) needed time to expand and onboard additional staff in their

agencies to meet the inundation of rental assistance applications and requests for services, thus slowing down referrals to mediation. Additionally, the EDI partners were mostly new partners for CMCs with little knowledge of community mediation, and therefore information sharing and relationship-building systems nascent at the time of program launch. As a result, and in the absence of a high volume of case referrals, the CMCs and MOPC, the HMP administrator, pivoted to focusing substantial effort on outreach and education, building and nurturing relationships with the EDI partners, especially the housing agencies.

Another reason for the lower-than-anticipated referral numbers was the slow reopening of District and Boston Municipal Courts three months after the HMP was launched. Even then, District Courts that opened were processing backlogs and had not begun handling COVID-related eviction proceedings. As the pandemic continued and the backlogs processed, the reasons identified for low case filings included: 1) cases being transferred to the Housing Court which had its own in-house dispute intervention process managed by housing specialists; 2) cases not being filed or were resolved because federal and state rental stabilization benefits (RAFT & ERMA) were addressing tenants' and landlords' needs; 3) federal moratorium continued to be extended which may have deterred landlords from filing eviction actions; and 4) some courts even where CMCs had a presence were not hearing summary process cases.

Although referrals from EDI partners were lower than expected, self-referrals to the HMP were higher. HMP served a total of 228 landlords and 263 tenants in a total of 400 mediated cases. In FY21, the self-referral percentage for the HMP was at 6% according to data recorded in MADtrac and was higher at 22% in biweekly case report data.¹ This contrasts with the percentage of all self-referrals to CMCs for all case types in FY18 to FY20, which was at a low 1.7%. The increase in self-referrals to the HMP is likely due to the extensive public education and awareness raising by DHCD and the Governor's Office about community mediation as a resource for eviction disputes as well as the utilization of the Resolution MA website maintained by MOPC, and the local outreach and advertising undertaken by the CMCs themselves with their local networks and communities. For some CMCs, outreach and trust-building efforts have paid off in terms of receiving an increase in self-referrals and being able to work with parties early on. Several CMCs also felt that upstream mediation (that is, mediation services provided before the case is brought to court) could help HMP bypass barriers to court referrals.

Community Mediation Centers invested HMP funds in ways that have increased efficiencies at each CMC. The HMP expanded training, resources and processes for service delivery, outreach and education that has increased the overall scope and elevated the quality of community mediation services. During the eight-month period in review, 12 CMCs hired 16 new staff, delivered three (3) summary process/refresher trainings, trained 74 additional mediators to mediate housing cases and oriented all staff and mediators to all the EDI and rental assistance programs.

¹ More work needs to be done to examine the validity of this data.

The hiring of dedicated HMP case coordinators paid rich dividends to CMCs and parties alike. Case coordinators played a vital role before, during and after mediation. Before mediators got the case, case coordinators conducted intakes, processed cases, ensured informed consent and necessary referrals for additional support, contacted parties to determine availability for mediation, scheduled mediations, conducted outreach to raise awareness about mediation and encourage utilization of mediation services, and engaged in data entry.

Through these efforts and public funding, HMP managed to establish a referral and mediation process that is dependable. But the program has room for growth. And since FY21 was a “pilot year,” with better outreach and education, and particularly if subsidies and public programs are phased out, HMP referral numbers could grow over time. This is because upstream cases and ones without financial assistance, resulting in even more complex cases, could be diverted in larger numbers to mediation. This underlines the need to continue investing in the HMP as a permanent public program to address housing instability in Massachusetts, alongside other public programs.

This report underlines several key findings and recommendations for sustaining and further strengthening the HMP. For the associated research data and analysis, please see *Appendix C: Evaluation Data and Analysis*.

Findings on HMP Implementation and Impact

The following detailed findings are supported by evidence in the detailed, fully sourced report appendices.

Solving rent arrears disputes and threat of evictions through HMP mediation

- 1. Rent arrears and threat of eviction were the most frequently stated reasons for residential eviction filings in Massachusetts.** The problem of rent arrears was the issue that was most frequently raised in HMP mediations according to a large proportion of surveyed mediators (85% of 33 survey respondents). In contrast, the number of mediators who identified tenant removals from premises as a predominant HMP mediation issue (18% of respondents) were many fewer than the rent arrearage numbers
- 2. Rent arrears are the most frequently resolved issue in mediation.** HMP mediators overwhelmingly agreed (88% of 33) that rent arrears, the most prevalent mediation issue, was also the issue most often resolved through mediation. Settlements of the problem of tenant removal from premises were the most frequent mediation outcome according to a small minority of nearly one-fourth of mediators (i.e., 27%) Two mediators cited agreements about the date when the tenant would vacate the premises.
- 3. Non-rent arrearage issues were infrequently mediated under the HMP:** Small numbers of surveyed HMP mediators -- between 12% and 15% of 33 -- reported that issues concerning repairs, lease expiration, and occupant behavior were the most frequent mediation topics. The least frequently raised mediation issues reported by two-thirds of surveyed mediators (67% of 33) involved premise overcrowding. Issues involving rent arrears, repairs, lease expiration, rent increases, rent amount, tenant's care for premises, occupant's behavior, and overcrowding were identified by small minorities of mediator respondents (between 9% and 0%) among the least frequently solved housing issues.
- 4. The HMP can assist parties find workable solutions to rent arrearage issues and eviction.** In several interviews, evaluators found evidence of the rent arrears barrier being overcome through dialogue between the landlord and tenant during a mediation process. Interviewed parties, mediators and case coordinators believe mediation can assist landlords and tenants reach an agreement, paving the way for them to access available financial assistance. And while a plurality of 41% of 32 mediators considered that agreements were achieved more often in housing mediation, 34% of the mediators regarded the frequency of agreements as about the same for housing mediations as for other mediations. As one mediator found, in HMP mediations "the parties are eager to work together to find a workable resolution."
- 5. The issue of rent arrears was usually settled through payment.** Whether the agreed-upon payments for unpaid rent were complete, partial, or conditional, the proportion of HMP mediators who reported that payments were occasionally

involved outweighed the proportion of mediators reporting frequent payments. Thus, out of 30 surveyed mediators who indicated that full payments were at issue, 47% reported the occasional involvement of full payments while a lower percentage of 33% indicated their frequent involvement. Similarly, partial payments were involved sometimes according to 58% of 31 mediators and often according to 26%. Payments with conditions were noted by mediators as either occurring sometimes (37% of 30) or often (33%).

Correlation between HMP housing mediation and tenancy preservation

- 6. A significant factor contributing to the success of housing mediation preserving tenancy is the state of the landlord-tenant relationship.** Housing mediation outcomes are connected to whether the landlord intends to evict the tenant and whether the tenant wants (or is able) to remain in the rental unit. The most common type of housing mediation in the HMP involves the tenant owing rent and the landlord is interested in keeping the tenant. In these cases, either the mediators or the HMP case coordinator (or, in some cases, both) meet with the tenant to create a budget as a way of assisting the tenants to determine whether it is financially feasible for them to remain in the rental unit. In mediation, the parties work together to come up with a payment plan (in many cases with the help of financial assistance from RAFT/ERMA or other sources) and affirm their commitment to preserving tenancy. Generally, the landlord-tenant relationship is positive, communication is open, and both parties share interest in preserving the tenancy. Nonetheless, being behind in rent can strain any landlord-tenant relationship, and so mediation plays an important part in helping parties to constructively engage with the problem and focus on shared interests.
- 7. Housing mediation can improve party communication and reduce conflict.** Disputes that do not have an impasse, where parties are willing to listen and understand each other, and where the development of trust is possible, and when technical issues are addressed, mediation is a useful tool that can help resolve and/or manage conflict through better communication. Mediation represents an important intervention for landlords and tenants that directs parties away from either conflict avoidance or escalation that results in the deterioration of landlord-tenant relationships and leads to increased risk of eviction. By being attentive to the interpersonal dynamics in the landlord-tenant relationship and the financial situation of the tenant, housing mediation contributes to preserving tenancy. Most HMP mediators found that party interactions, such as communication and conflict, often improved due to housing mediation. Over three-fourths of mediators observed better communication and reduced conflict between mediating parties to be frequent (76% and 79% of 33 responding mediators, respectively). In the experience of a small minority of 15% of mediators, such party interactions were usually unchanged. On the other hand, two mediators (6%) observed that parties' communication often deteriorated because of mediation. No mediators reported frequent escalation of party conflict arising from mediation.

8. **A strong correlation exists between housing mediation provided through the HMP and tenancy preservation.** An analysis of a sample of 174 written mediated agreements reached between landlords and tenants through housing mediation offered by ten Community Mediation Centers (out of 12) during the 6-months period from January to June 2021 shows that 118 agreements, a little over two-thirds (68%), resulted in the preservation of tenancy through mediation, suggesting a strong correlation between housing mediation and the preservation of tenancy. In addition, HMP case studies (see case studies 4 and 5 in Appendix D) provide a detailed account from parties and mediators of the preservation of the tenancy and highlight the mediators' approach to addressing landlord-tenant relationship issues and facilitating parties' agreement which satisfies both of their interests). Survey data shows that evictions were initiated during housing mediations often (45%), sometimes (35%) or rarely (13%) according to 93% of 31 mediators. All 30 mediators found that evictions were prevented during mediations either often (47%), sometimes (50%) or rarely (3%). Delays in the eviction date were accomplished according to 93% of 31 mediators often (48%), sometimes (35%), or rarely (10%). Finally, 86% of 31 respondents observed that tenant pre-mediation departures from their premises were frequent (3%), occasional (35%) or rare (48%). Only a single mediator indicated that such tenant departures were a frequent feature of his/her mediations.

HMP performance and party satisfaction

9. **The HMP has delivered a well-designed, satisfactory, and sustainable program.** For landlords and tenants impacted by the pandemic and facing mounting debt and the threat of eviction and housing instability, the HMP has been a critical intervention and has had a positive impact both in terms of preserving tenancy/increasing housing stability and mitigating the negative psychological, social, and financial impacts associated with facing eviction and homelessness. This is demonstrated by mixed methods research, including the case studies discussed in the latter sections of this report (see Appendix D).
10. **Satisfaction with the HMP is high among landlords, tenants, and lawyers alike.** According to survey results from parties (i.e., tenants, landlords, and lawyers) who participated in housing mediation, respondents overwhelmingly approved of the HMP mediation services they received. The problems of the surveyed individuals were handled to the satisfaction of 93% of the 47 respondents. Ninety-eight percent (98%) indicated that the mediation process was fair to them. And 88% were satisfied with the outcome. The 47 surveyed individuals were unanimous about the clarity of the information they received about mediation.
11. **The HMP performed well in key areas of mediation program performance.** According to data from the decentralized case management database MADtrac, during the eight-month period from November 2020 through June 2021, the HMP received 897 referrals of which 505 were screened, resulting in 400 cases of which 239 were mediated. One hundred thirty-three mediations resulted in

tenancy preservations and 41 had a move-out date while 10 mediations preserved subsidies. Of these mediations, 172 resulted in full agreements, which yields a 72% settlement rate. This settlement rate is on par with other Massachusetts community mediation program settlement rates. A further 14 cases resulted in partial agreements while 47 did not result in any agreement at all. This output was achieved through 283 mediation sessions or 793 mediation hours of which 466 were leveraged volunteer mediation hours and 89 hours of volunteer administrator hours.

- 12. Mediator performance was highly rated by parties.** Most of the 47 surveyed individuals were pleased with the assistance they received from HMP mediators. Mediators' listening skills were acknowledged by an overwhelming majority of the respondents (91% or 43). Large majorities also appreciated mediators' help with identifying and clarifying issues (83%), enabling parties to voice concerns and make their own decisions (83%), and with generating ideas and options (70%). Smaller majorities recognized that mediators assisted with generating new information and helped parties be open to alternative solutions (51% and 60%, respectively). Parties expressly praised mediators for such things as their ability to encourage productive discussion: "Help facilitate good dialogue" and "They were able to move the process along as efficiently as possible"; for their patience and tact: "They had a lot of patience and tact to resolve issues"; and for their listening skills: they "validated and summarized concerns in a way that communicated understanding." Lawyers representing both landlords and tenants interviewed as part of this evaluation found mediation to be a more amicable way to resolve conflicts while others found mediation to be a neutral and early intervention conflict resolution tool to resolve landlord-tenant disputes.
- 13. HMP "slowed down" the mediation process, which increased the quality of the mediation service.** Prior to HMP, with traditional summary process or landlord-tenant mediation, CMCs had very little time preparing parties or assisting parties with mediation. Interviews with case coordinators and mediators indicate the benefits of HMP in carving out more time for case intake, mediation, or referral to other services like legal aid or housing counseling that has resulted in higher quality outcomes for the parties. As a mediator reported in the interviews, pre-COVID, conducting between five to six housing mediations in court within an hour was "not ideal." While still helpful, the short amount of time available to mediate was not sufficient to address the many complicated issues that emerged. During COVID, the same mediator reflected, "just having [a case coordinator] do an intake with folks is so important" because it slows the process down, allowing for information gathering and trust-building with parties, especially with tenants who may not feel empowered to voice their interests and concerns.
- 14. Key HMP partner interactions demonstrate signs of a successful collaboration.** DHCD, MOPC and the CMC consultant (the Berkshire County Regional Housing Authority or BCRHA) attested to the successful collaboration between the different organizations involved, including the CMCs and EDI partners. The collaboration resulted in open and transparent communication, joint

problem-solving, resource sharing, joint decision-making, free sharing of information. DHCD, MOPC and the CMCs highly rated the making of compromises, problem-solving, conflict management, meeting challenges and deadlines, and the level of communication between organizations.

Emphasis on upstream mediation²

15. The importance of upstream mediation and building trust with communities.

In addition to working with the District Courts to offer housing mediation, many mediators and case coordinators voiced strong opinions about the importance of working “upstream” -- for instance, working with parties before summary process complaints are filed -- as a way of resolving disputes before tenants face eviction and landlords commit to the time-consuming and costly eviction process. With this aim in mind, CMCs invest not only in outreach efforts, such as one-off events like giving presentations at agencies and speaking about mediation at town hall meetings, but also in building trust within the communities they serve and with a broad range of agencies, organizations and institutions that serve and interact with communities that are at high-risk of eviction and housing instability. For some CMCs, their outreach and trust-building efforts have paid off in terms of receiving an increase in self-referrals and being able to work with parties early on. Several CMCs also felt that upstream mediation can help HMP bypass barriers to court referral.

16. Upstream referrals from EDI partners did not materialize as anticipated.

According to one DHCD official “all [EDI] programs require the party to request services, although a service provider may initiate contact with a potential recipient either based on a referral or as part of general outreach activities” and “all programs will make referrals as appropriate.” One of the assumptions made when launching the HMP within the EDI was that EDI partner agencies, HCECs and RAAs, would be making many referrals to mediation as soon as the HMP was fully launched. MOPC, the program administrator, and DHCD, the program sponsor, had prepared guidance about when to refer tenants and landlords to mediation, which was shared with EDI partners. However, due to the need for HCECs, RAAs, and CELHP to expand and onboard additional staff in their agencies to meet the inundation of applications and requests for services, partner agencies were slow to start referring parties to mediation. Additionally, the EDI partners were mostly new partners for CMCs with little knowledge of community mediation, and thus groundwork on information-sharing and relationship-building needed to be done. As a result, and in the absence of a high volume of case referrals, the CMCs and MOPC pivoted to focusing substantial effort on outreach and education, building and nurturing relationships with the EDI partners, especially the housing agencies. MOPC and DHCD met to discuss potential mediation referral decision trees and case types appropriate for mediation that could be shared with EDI partners. To relieve the housing agencies from having to “sell” mediation to parties, the agencies were encouraged to refer all appropriate cases to mediation screening and allow the CMCs to describe the

² Upstream mediation refers to mediation services delivered before a case is brought to court).

process to parties and help landlords and tenants to determine if mediation was right for them. DHCD also facilitated introductions to organizations where MOPC could do educational presentations regarding the HMP, including MASSCAP (Massachusetts Association for Community Action), MA Association of Regional Service Coordinators, MA Association of Realtors, Age Strong Commission, MA Landlords Association and Volunteer Lawyers Project, to name a few. MOPC shared these presentations with CMCs and encouraged them to reach out to local organization to augment the messaging. MOPC led these outreach activities at a statewide level and encouraged CMCs to follow up by building local partnerships. Additionally, MOPC met with individual CMCs that had lower referral numbers from upstream EDI partners to provide guidance on best practices and coaching to support their outreach efforts. The outreach effort continued through the end of the fiscal year, as numbers of referrals from EDI partners remained low. In addition to outreach with the EDI partners, MOPC and the CMCs also made sustained efforts to reach out to the public, posting information on the Resolution MA website.

Challenges and opportunities to housing mediation

- 17. The HMP has established a proven referral and mediation process that has the potential to provide services for an expanded caseload.** In the period between November 2020 and June 2021, 12 CMCs fielded a total of 897 referrals and handled a total of 400 opened mediation cases. Cases were referred by the District Courts, housing agencies, and by landlords and tenants themselves during this period. Since FY21 was a “pilot year,” with better outreach and education, and particularly if subsidies and public programs are phased out, HMP referral numbers could grow over time. This is because upstream cases, and cases lacking financial assistance could be diverted in larger numbers to mediation.

- 18. Court closures, slow reopening, and low case filings affected case numbers:** At the outset, it was anticipated that referrals from the District Courts would be high although lower due to court closures from the pandemic. However, as courts began slowly reopening virtually, the anticipated large caseload did not materialize for several reasons. First, the District Courts that opened were processing backlogs and had not begun handling COVID-related eviction proceedings. Second, some of the District Court and BMC (Boston Municipal Court) reopening did not occur until January, three months after the HMP was launched, and in some instances even later in the fiscal year. As the pandemic continued and the backlogs were being processed, the reasons identified for low case filings included: 1) cases were being transferred to the Housing Court which had its own in-house dispute intervention process managed by housing specialists; 2) cases were not being filed or were resolved because federal and state rental stabilization benefits (from RAFT & ERMA) were addressing tenants’ and landlords’ needs; 3) the federal moratorium continued to be extended which may have deterred landlords from filing; 4) some courts where CMCs had a presence were not hearing summary process cases. MOPC met with each CMC to discuss the situation and ultimately concluded that, for the coverage that was being

provided by the CMCs in courts that were open, all potential District Court cases were being referred to mediation. Since most cases were being filed with the Housing Court, DHCD arranged for MOPC to meet with the Housing Court leaders to discuss how the HMP and dispute intervention services were complementary and explore potential mediation of Housing Court-referred cases through the HMP since some CMCs were approved court-connected ADR providers in the Housing Court. The Housing Court concluded that HMP could best help with upstream cases as there were sufficient housing specialists available to handle cases pending in the Housing Court.

19. Unfamiliarity with mediation resulted in low case numbers for the HMP and was addressed through targeted outreach: One of the factors for the low number of upstream referrals from EDI agencies and community-based housing-related organizations, was the lack of familiarity with mediation of their staff. This lack of familiarity was also shared by the public. DHCD provided feedback to MOPC that the house-to-house campaign deployed to share information about the EDI reported having trouble describing mediation and those individuals receiving the information did not understand it either. MOPC worked with the marketing firm contracted with DCHD to refine the messaging and connect the firm to the CMCs providing services in the targeted regions. As a result, several CMCs participated in town halls in gateway communities (Springfield and New Bedford/Fall River) to share information about community mediation in English, Spanish and Portuguese. MOPC and CMCs continued to identify and develop new ways of describing community mediation, pulling from the wisdom and experience of staff involved with youth programs and using listening sessions from other projects.

20. Although referrals from EDI partners were low, self-referrals to the HMP were high: In FY21, the self-referrals percentage in the HMP was at least 6% and potentially as high as 22%.³ This contrasts with the proportion of self-referrals to MA community mediation for all case types in FY18 to FY20, which was at a low 1.7%. The increase in self-referrals is likely due to the extensive public education and awareness raising by DHCD and the Governor's Office about mediation as a resource for eviction disputes as well as the utilization of the Resolution MA website and the local outreach and advertising undertaken by the CMCs themselves with their local networks and communities

Systemic and pandemic-induced issues and the challenge to mediation

21. The housing crisis is a systemic issue, and therefore it is important to recognize the limits of what mediation can do within the broader housing crisis. Mediators' reflections on their experience with the HMP also reveal some of the limitations of housing mediation in addressing the root causes and

³ The 6% number came from the monthly MADtrac data reports while the 22% number was based on the bi-weekly case data reports.

structural dimensions of the housing crisis that exacerbate the threat of eviction and homelessness. While housing mediation can offer a critical intervention for an individual or family facing eviction, housing mediation does not address the larger ongoing structural issues underpinning the housing crisis (e.g., lack of affordable housing, lack of employment with a living wage, etc.).

22. Housing mediation is defined by housing issues that arise from underlying socioeconomic conditions. As a mediator cautioned: “Housing mediation manifests itself very differently from location to location. In areas of lower socio-economic status landlords tend to be individuals with often lesser experience with the court and knowledge of the legal system. In areas of higher socio-economic status, the landlords are often represented by legal counsel, this also applies to larger housing complexes as compared to multi-unit houses. It is extremely difficult for me to qualify "housing mediation" as a single issue at this moment when different locations have such drastic differences.”

23. Parties’ circumstances, exacerbated by the pandemic present greater challenges for the mediation of housing issues than for other types of mediated issues. The stakes for parties, the frequency and extent of the imbalance of power between parties, and the importance of party knowledge about their rights and defenses were all greater in housing mediation than for other mediated issues according to majorities of 55%-79% of 33 mediators. Notably, despite the challenges, HMP mediation satisfied most parties. Moreover, mediators reported that HMP mediation tended to lower conflict and increase communication between parties. Mediators not only acknowledge these challenges but have turned them into advantages for helping parties. As a mediator noted: “Things are starting to get a little easier. I think what the process does is it gets the parties, as I said, realizing that it's not personal, that it's a systemic problem for everybody, that someone I didn't use this phrase, but someone else did. We're not all in the same boat, but we're all in the same storm. So, it's had an impact on everybody. And when you get them to focus not on the personal, but you focus on the situation, people are much more apt to get involved in solutions.”

Importance of state-funded housing mediation infrastructure

24. HMP cases demand greater mediator and case coordinator time, expertise, and competence. Mediators and case coordinators all agree that cases mediated under the HMP are typically more complex than traditional pre-COVID summary process or landlord-tenant mediations. Mediators report a deepening of their expertise in housing mediation and the relevant technicalities associated with it. Case coordinators report how they have filled gaps in educating parties to navigate the housing crisis and become a “go-to” resource in the community for both landlords and tenants. As one mediator pointed out, “these are challenging and sometimes heart-breaking mediations, but I think mediators can really make a difference [b]y giving both sides a chance to vent and work together.” Case coordinators (and mediators to some extent) across CMCs dedicate a significant amount of their work time (and in some cases, personal time outside of work) to

outreach efforts both to increase referrals and establish referral pipelines in anticipation of an increased need for mediation when the financial assistance programs decrease.

25. HMP case coordinators' role is vital in many respects and has expanded over time.

Case coordinators play a vital role before, during and after mediation. Before mediators get the case, case coordinators conduct intakes, processing cases, provide education and referrals to other sources for assistance, act as liaisons, contacting parties to determine availability for mediation, schedule mediations, conduct outreach to raise awareness about mediation and encourage utilization of mediation services, and engage in data entry. At some CMCs, the case coordinator shares responsibilities related to their role with co-workers (e.g., part-time staff and/or mediators assisting with scheduling, intakes, etc.) while at other CMCs the case coordinator is the sole person fulfilling these job duties. After mediation, the case coordinator may continue to assist parties. At one CMC, the case coordinator sent a follow-up email to all clients who had participated in housing mediation to inform them that they could potentially be eligible to apply for additional financial assistance. Continuing to inform parties about updates to new programs and forms of assistance seems to be a responsibility of case coordinators that could be explored further. Case coordinators said their role has expanded over the course of the HMP both because of external situations and the initiative taken by case coordinators to expand their activities/responsibilities due to gaps in services provided by other agencies.

26. The HMP has expanded the infrastructure of community mediation.

Community Mediation Centers have invested HMP funds in ways that have increased efficiencies and capacities at each CMC. The HMP has induced much needed training, resources and processes for service delivery, outreach and education that has increased the overall quality of community mediation services. During the eight-month period in review, 12 CMCs hired 16 new staff, delivered three (3) summary process/refresher trainings, trained 74 additional mediators to mediate housing cases and oriented all staff and mediators to all the EDI programs.

27. The HMP has increased awareness, access, and utilization of community mediation.

The HMP expanded the network of referral sources for community mediation to include referrals of upstream housing cases from housing agencies in addition to referrals from courts. CMCs logged over 1500 hours conducting outreach to EDI partner agencies, District Courts, nonprofit agencies, local landlords, local businesses, and the public. MOPC made presentations about the HMP to 12 different statewide organizations, including community action agencies, landlord associations, and housing and legal services. As a result, more people have become aware of and are able to use community mediation services through the HMP, including landlords, tenants, and lawyers as well as government agencies and community-based organizations.

28. A useful “two-tier” system of pre-trial mediation has emerged in some courts. The two-tier system has provided opportunities for parties to seek mediation before their case goes to trial. Some CMCs have been able to work with the courts to receive referrals as soon as parties file a case, which has allowed HMP case coordinators to inform parties about mediation and schedule a mediation before they go to a case management conference or to trial. Creating a referral system with courts early in the summary process procedure (as early as the filing of the complaint) has given CMCs more time to mediate complex housing cases and offer access to other resources as needed whereas pre-COVID many CMCs were conducting mediations on the day of trial.

HMP needs more diversity

29. Diversity in the mediator pool can help expand HMP access and utilization by unserved/underserved communities. Interviews with CMC staff seem to indicate that considerable time is devoted to HMP outreach efforts, but several staff acknowledge that more targeted efforts could be tailored to the needs and demographics of their respective communities. One CMC sees a need for reaching linguistically diverse communities while another would like to target landlords to inform them of the benefits of mediation. They all agreed that CMC diversity, meaning mediator and even case coordinator diversity, could increase HMP access and utilization by unserved/underserved populations.

30. At present, Community Mediation Centers involved in the HMP do not fully reflect the diversity of the populations they serve. With respect to such characteristics as racial/ethnic origin, socio-economic class, multiple language proficiency, and gender, gender was the sole feature of the HMP mediator pool that most mediators (52% of 33) thought mirrored the population to be served. Otherwise, majorities of the surveyed mediators were under the impression that the general pool of housing mediators failed to reflect the race/ethnicity and socio-economic class of that population (as per 59% of 32 and 61% of 33 surveyed mediators, respectively). Along the same lines, a plurality of mediators (47% of 32) did not think that the multiple language proficiency of mediators reflected that of the relevant population. However, sizable minorities of the mediators – from 33% of 33 to 44% of 32 mediators – indicated that they didn’t know about the connection between the mediator pool and the population served with respect to each of the above four characteristics.

Power imbalances, rights, and the role of legal, housing, and financial assistance

31. Party knowledge/awareness of legal rights and responsibilities is ambiguous. Nearly all the HMP party survey respondents (39 or 98% of 40) claimed to be aware of their legal rights when mediating. A somewhat smaller but still very large proportion of responding individuals (35 or 95% of 37) professed awareness of the other party’s legal rights. A sizable proportion of 47 respondents (over two-thirds or 68%), however, did not obtain legal advice or representation during mediation. Nearly one-third of respondents (32%) did receive such legal assistance. The awareness of legal rights and responsibilities of the parties when

mediating did not seem to correlate with obtaining legal advice prior to mediation or having a lawyer present during mediation. In party interviews, follow-up questions about what they understood about their legal rights and responsibilities as they pertained to their housing dispute were also ambiguous, especially among tenants. Most tenant responses to the question referred not to any legal counseling or indication of knowledge of housing law, but rather to the introductory explanation that mediators offer to parties about the principles and process of mediation. Mediators' assessment of parties' level of knowledge of their legal rights and responsibilities mostly registered high.

32. Mediators were careful not to risk their impartiality by providing legal or housing advice to parties. When offering a description of their approach to addressing the power imbalance in mediation caused by disparity in parties' legal knowledge, no mediator interviewed for this evaluation indicated that they provided legal advice to either party; rather, they may have provided legal information to parties. Cognizant of how even providing legal information to one party may give the other party the appearance of a breach of neutrality, some mediators stated that they avoid providing legal information during mediation. Having the HMP case coordinator furnish parties with access to legal information prior to mediation is a strategy used by some of the CMCs to preserve the principle of neutrality for the mediators while also trying to address power imbalance by providing legal information prior to mediation.

33. Housing counseling and financial assistance is generally useful to mediating parties. From the party surveys, 49% felt housing counseling and financial assistance received was useful during mediation (37 respondents). Another 49% failed to receive housing counseling or information about financial assistance (49% of 37 respondents). A sizable proportion of 47 respondents (over two-thirds or 68%) did not obtain legal advice or representation during mediation. Nearly one-third of respondents (32%) did receive legal assistance.

34. The coupling of housing mediation with robust financial assistance is a significant factor contributing to tenancy preservation. The quantitative data reveals a strong correlation between RAFT assistance (and other financial assistance) and preservation of tenancy. The provision of financial assistance to landlords and tenants to cover rent arrearages in part or in whole provided relief during the pandemic and helped to resolve landlord-tenant disputes. HMP mediators agreed that the expanded availability of financial assistance to tenants and landlords suffering from COVID-related housing crises helped to erase or lessen the debt burden of rent owed. In many cases involving RAFT assistance, for example, mediation remained an important resource to both landlords and tenants. Filing for RAFT requires the participation of both landlords and tenants and involves a lengthy application process. Housing mediation continues to play an important role in helping disputing parties work together and communicate constructively during the application process and smooth over any obstacles to the receipt of the aid. Mediation also helps to prevent homelessness because coordinators found themselves assisting parties during the RAFT application

process, especially when communication between parties broke down or when access to more information for decision-making was needed.

- 35. Mediators and case coordinators effectively address power imbalances between landlords and tenants.** Nearly all housing disputes mediated in the HMP involve rent owed, which creates a power imbalance between the landlord and tenant. As noted in the housing mediation and eviction literature review, an effective housing mediation program needs to address the power imbalance between landlords and tenants. Findings show that mediators are attentive to power imbalances between the parties in mediation and employ strategies to control a party's dominance and exercise judgment about continuing mediation if a party needs access to legal information to make an informed decision. The role of the case coordinator in the HMP also helps to address power imbalances between tenants and landlords who often have legal representation and more resources compared to tenants, especially low-income tenants.

Utilization of HMP housing mediation by courts.

- 36. Expanding the use of HMP housing mediation by the court system would benefit both disputing parties and the courts.** Some interviewed mediators and case coordinators felt that unless the court system's use of housing mediation was expanded, the likelihood of increases in the number of parties benefiting from mediation assistance with their housing disputes and of improvements in court efficiency might not be maximized. Circumstances such as court closures, the challenge of shifting from in-person to remote mediation, late court openings, and the transfer of cases to the Housing Court have depressed the use of community mediation for summary process cases by the court system. Notwithstanding these challenges, 897 case referrals were received by the HMP in eight months, 40% of which were generated by the District Courts, and the resolution of 72% of 239 mediated cases under the HMP in FY 2021 helped parties resolve housing issues whilst reducing court caseloads, thereby increasing time and cost efficiencies for the court.

- 37. Benefits may accrue to parties and the court from supplementing the Housing Court's dispute intervention services with HMP mediation services.** The Housing Court's practice is to rely heavily on its housing specialists to provide dispute intervention services in housing cases and to infrequently call on the dispute resolution services of outside programs, even from programs approved as Housing Court ADR (alternative dispute resolution) providers. According to interviewed HMP coordinators and mediators, by supplementing the Housing Court's services with the option of HMP services, the Court would provide parties with the opportunity to benefit from HMP's experience with assisting parties in navigating the network of services from other agencies and organizations as well as the program's flexibility in adjusting the pace of mediating both to accommodate party needs as well as to promote mutually satisfactory dispute resolution. Successful HMP mediation outcomes could lower the demands on the Housing Court and reduce the Court's caseload. The interviewed HMP

coordinators and mediators fully supported continued communication with the Housing Court about the HMP and discussion about the possibility of an expanded relationship between the Housing Court and the HMP.

Defining HMP success

38. Current HMP reporting practices that emphasize quantitative measures capture a narrow definition of success. Reporting practices that emphasize quantitative measures of success--for example, the number of referrals, mediations, and tenancies preserved--capture a narrow definition of success, leaving out broader definitions and measures of success that can capture the larger impact of the HMP. The topic of measuring the success of the HMP emerged in interviews with mediators, case coordinators and in the debriefing with DHCD. Mediators and case coordinators expressed a desire to document efforts and outcomes that current reporting tools are not capturing, mainly stories that recount the impact of the HMP on parties. As a case in point, one case coordinator communicated that many cases referred to the CMC do not go to formal mediation because the case coordinator helps the parties to find resources that address the issue of rent arrears. By connecting the parties with resources and serving as a go-between for the parties for communicating the status of the RAFT application, the case coordinator's efforts contribute to the outcome of tenancy preservation without parties having to go to mediation. These cases in which tenancy is preserved through the assistance of the case coordinator referring parties to apply for financial assistance are recorded as "too few parties for mediation." The case coordinator felt limited by the current reporting tool and struggled to find ways to report on the efforts to assist parties outside the frame of formal mediation but that nonetheless resulted in one of the main aims of the HMP: preserving tenancy.

Recommendations for Increasing HMP Utilization and Impact

The following recommendations are supported by the evidence-based findings detailed above and presented in detail in the report appendices.

- 1. Strive for more referrals, particularly upstream referrals in partnership with HCECs, TPPs (Tenancy Preservation Programs), legal organizations and other community-based organizations.** There needs to be a more formal system put in place by DHCD to identify cases suitable for referral to HMP sooner before parties file cases in court, and then have them referred to the HMP. Early education, screening and referral by EDI partners would prove particularly beneficial to the success of the HMP in promoting housing stability. MOPC and the CMCs should continue efforts at state-level and local-level outreach presentations and relationship-building.
- 2. Sustain financial support to maintain and/or increase current staffing levels/resources, including expansion of mediator and case coordinator diversity.** The state's initial investment in the HMP financed the development and implementation of program infrastructure that was designed to handle a

substantial workload of housing cases and address housing stability. In its very first year, the HMP not only delivered mediation services for parties in eviction cases to help with all types of housing issues, including rent payment problems, and achieved a high agreement rate, it also provided more comprehensive services by connecting parties to other EDI agencies. Sustaining and/or increasing financial support for the statewide HMP infrastructure would help CMCs retain paid case coordinators and other paid staff, further ensuring HMP sustainability. Additional financial resources could also be deployed to recruit, train, and maintain a pool of economically, racially and/or ethnically, and linguistically diverse groups of mediators, which would be vital to increasing community mediation referrals and outcomes for low-income and/or diverse/marginalized populations. In addition, such funding would increase outreach, education, case coordination and mediation to members of the public lacking English-language proficiency by supporting CMC efforts to hire a diverse staff and mediators proficient in multiple languages. Sustaining/increasing financial support will also be vital for supporting all Community Mediation Centers in the event of an increase in referrals to housing mediation when federal and state rental assistance programs diminish. Mediators and case coordinators concur that level/sufficient staffing is needed irrespective of the fluctuation in referrals to enable the continued provision and quality of services, the cultivation of referral sources, trust-building with underserved communities, and other outreach efforts to increase awareness and utilization of mediation services.

3. **Promote HMP awareness and utilization across different Trial Court Departments:** HMP should continue outreach efforts to the District Courts and Boston Municipal Courts especially where partnerships are lacking, and where CMCs are not on the approved list of providers to mediate summary process cases. CMCs should engage in more targeted efforts that could be tailored to the needs and demographics of their respective communities like reaching linguistically diverse communities or targeting landlords to inform them of the benefits of mediation. Continued outreach to the Housing Court on the benefits of increased HMP utilization for parties and the Court itself is also encouraged.
4. **Study ways to increase community mediation diversity and approaches to serve underserved/unserved and/or marginalized communities:** As recommended above, targeted, and continuous funding to community mediation through HMP will help increase diversity in the coordinator and mediator pool. This will also result in an increase in housing mediation referrals. Rule 7(b) of the Uniform Rules requires providers to actively strive to achieve diversity among staff, neutrals, and volunteers. MOPC and the CMCs should appoint a working group/professional learning community to study and address the lack of diversity among staff, neutrals, and volunteers, and make recommendations for inclusion, as appropriate. The learning community can also examine successful practices for attracting diversity into the mediator pool and professional staff. HMP should also consider the findings and recommendations of the MOPC-CMC diversity initiative, which is currently examining ways to increase Massachusetts

community mediation diversity, equity, and inclusion. HMP should demonstrate a commitment to diversity in terms of program policies and funding.

5. **Continue to build HMP mediator excellence through a steady stream of HMP cases, further training, reflective practice, mentoring and by rotating referrals among the mediators:** HMP cases can be complex and time-consuming. Mediators need continuous training, mentoring and an awareness of substantive knowledge to mediate these cases. HMP should continue to enlist CMCs with more experience in housing mediation to conduct additional trainings for other CMCs, CMCs should also consider the benefits of developing a housing mediation professional learning community, that builds upon current peer support efforts, for sharing experiences and mentoring less experienced mediators. Implementation of these proposals needs to be examined for feasibility and effectiveness.
6. **Support replication of existing successful housing mediation practices across all CMCs:** The research uncovered several successful practices and models for increasing awareness, access, and utilization of HMP mediation, for example, in conducting outreach to the courts, trust-building with communities, developing person-to-person community education and outreach strategies, etc. that should be replicated across all CMCs where possible. Current efforts to collaborate across CMCs on reflective practice and capacity building should be institutionalized. A professional learning community is again recommended for this purpose.
7. **Conduct further research to measure the effectiveness of outreach efforts to expand public's understanding of mediation and utilization of mediation services:** Findings strongly suggest that CMCs engage in extensive outreach efforts; however, further research should be conducted to measure the effectiveness of outreach efforts to expand public's understanding of mediation and utilization of mediation services. To determine the extent to which various population groups obtain access to HMP mediation services, effective methods of tracking the demographics of parties served by the HMP should be established. A one-size-fits-all outreach strategy may be elusive given the demographic variation among the areas where CMCs operate. For example, one case coordinator voiced a need for targeting outreach efforts to linguistically diverse communities whereas a case coordinator at another CMC identified a need for more targeted outreach to landlords and property managers. Despite the variety of outreach efforts across CMCs, all case coordinators reported a need to do more to raise awareness, access, and utilization of mediation services. Further research, including focus groups and surveys, to understand in-depth whether the outreach efforts of CMCs have the potential to identify best practices that could be tailored to the specific needs of communities across the Commonwealth. For example, DHCD suggests targeting under-served communities. Understanding which communities are under-served in the areas where CMCs operate and how CMCs work to make mediation known and available to those communities could be a beneficial starting point to evaluate existing outreach efforts. In addition to continued research on best practices for local outreach, continued statewide public education and messaging campaigns in

partnership with DHCD to raise awareness and understanding of community mediation are recommended.

8. **Review HMP definition of success and conduct further research to develop widely accepted and appropriate measures for evaluating the housing mediation program:** HMP should expand its measures of success from tenancy preservation to include other qualitative and quantitative outcomes relating to housing stability in a broader sense, which includes gathering stories that document qualitative outcomes. Of particular importance is dedicating resources to study effective ways of measuring HMP success from the perspective of parties through mixed methods, including both quantitative and qualitative data. The different ways of measuring success for parties, and measuring the economic impact of the HMP, as well as how to improve response rates should be studied.
9. **Ensure mediation is used as a tool along with all the other tools used to address the housing crisis longer-term.** The more complex and systemic the housing crisis, the more diverse interventions need to be to address that complexity. Mediation, therefore, is best practiced alongside other initiatives documented here like housing and legal counseling/assistance and financial assistance to landlords and tenants. HMP housing mediation delivered through Community Mediation Centers must continue to have “a seat at the table,” given its effectiveness. However, as federal housing subsidies related to the COVID-19 pandemic are reduced or eliminated, HMP must be prepared to shoulder the burden of receiving many more case referrals with even more complex housing instability issues.

Appendix A: Overview of Program Design and Implementation

The Massachusetts Housing Mediation Program (HMP) is a comprehensive statewide program that uses mediation as a homelessness prevention and housing stability tool initiated as a vehicle to help mitigate the costs and negative economic impacts from evictions during the COVID-19 pandemic. It was developed as part of the Baker-Polito administration's Eviction Diversion Initiative (EDI), which includes a comprehensive and coordinated set of federal and state programs and funding resources to support tenants and landlords through the financial challenges caused by the pandemic.

Initiated in October 2020, the HMP utilizes existing state (MA Office of Public Collaboration or MOPC) and local (Community Mediation Centers or CMCs) dispute resolution infrastructure serving courts and public agencies to leverage public investment, centralize administration, and ensure quality of services. MOPC is the state dispute resolution agency for the Commonwealth and the grant program administrator for the state-sponsored community mediation system, deployed to assist courts and public agencies with the design and administration of evidence-based dispute resolution programs for important public issues. With MOPC oversight, 12 Community Mediation Centers (CMCs) across the Commonwealth provide free mediation and conflict resolution services under HMP auspices to tenants and landlords with housing disputes at any stage, from the earliest point a problem occurs up to and after any eviction action in court. Cases are referred to CMCs through partner EDI agencies, courts, NGOs, and individuals.

The following HMP activities were completed during FY21 with inputs, outputs, outcomes and means of verification (MOVs) discussed below:

1. Program design and implementation (including training and orientations)
2. Program roles and responsibilities
3. Delivering program activities and services
4. Program monitoring and planning

1. Program Design and Implementation

Program development began in October 2020, by the Department of Housing and Community Development (DHCD) and MOPC in consultation with Berkshire County Regional Housing Authority on designing the HMP framework to work within the broader EDI. As both the HMP and EDI were being designed and launched concurrently, design and implementation at the systems level informed and affected the design and implementation at the program level and vice versa. At the broader, systems, level, DHCD coordinated and facilitated meetings between all EDI agency partners (housing agencies, legal aid organizations and CMCs) to map out the referral processes between agencies, guidance for 211 call takers in directing callers to the appropriate resources, the flow of inter-agency case handling, and inter-agency data sharing. Additionally, DHCD coordinated the development of standardized forms for cross-agency communication and referrals. At this stage, DHCD oversaw and MOPC focused on developing HMP policies and protocols for program administration including referrals to mediation, data collection

and sharing, and monitoring and evaluation plans. MOPC's own meetings with the 12 CMCs initially focused on launching the HMP within an accelerated timeline of 5 weeks. This included CMCs identifying and designating existing staff or hiring new staff to administer the HMP, identifying qualified and experienced volunteer mediators, orienting staff and volunteer mediators to the EDI partners' services, and providing summary process refresher trainings to ensure readiness of CMCs to handle the anticipated large case volume and to transition to remote mediation services resulting from pandemic restrictions on in-person meetings. With the input of the CMCs, MOPC developed standardized forms, compiled best practices for remote mediation and case management, and guidance policy documents to promote quality and consistency of services, facilitate data collection, and provide accountability. Interpreter services for upstream cases were provided for CMCs and several program forms were translated into the three most used languages: Spanish, Portuguese, and Mandarin. Rollout occurred in two phases, with seven CMCs going live in early November 2020 and the remainder later in the month.

The HMP was designed to expand existing community-based infrastructure handling eviction cases in court to upstream services to provide entry points to mediation at the earliest stages of a housing crisis for individuals and families. The expansion required coordination among all EDI partners, including presenting orientations to each other on their respective existing and expanded services and convening regular statewide and regional meetings to adjust processes as needs arose or gaps in the system were found. These took place weekly over a period of several months in fall 2020. Orientations were also provided to agencies processing housing assistance applications, and later to property managers participating in the Subsidized Housing Emergency Rental Assistance program (SHERA). Regions were identified by the EDI partners, and TPPs took the lead in organizing the first regional meetings for each region. These monthly meetings focused on developing and refining region-specific practices between partners and thereafter continued on a regular basis. By January 2021, most HMP systems and services were in place.

2. Program Roles and Responsibilities

Department of Housing and Community Development (DHCD)

As the agency responsible for launching the statewide EDI, DHCD sponsored and coordinated the design and implementation of the HMP with MOPC. The HMP was initially funded through an intergovernmental services agreement between MOPC and the Executive Office for Administration and Finance on behalf of DHCD and then shifted to a state appropriation in MOPC's line item 7100-0700 in the FY21 budget. DHCD remained the lead agency overseeing the HMP in its role as coordinator and overseer of the EDI, which included hosting the planning meetings with EDI partner agencies to identify the overall referral process; scheduling orientation webinars to familiarize EDI partners with all the available resources; and collaborating with MOPC to determine metrics and data collection. Additionally, DHCD met with MOPC weekly during the design and initial implementation stages and bi-weekly subsequently to monitor the HMP and problem-solve challenges that arose.

Massachusetts Office of Public Collaboration (MOPC)

As the HMP program administrator, MOPC designed the program with input from the CMCs, DHCD, and technical consultation from BCRHA. MOPC also coordinated implementation and directed the provision of remote mediation services by CMCs for housing-related issues. This work was led by MOPC's Executive Director and Director of Community Mediation Programs and carried out by HMP Program Managers. HMP design included creating program policies, procedures, forms, data collection instruments, evaluation measures, and database adjustments to standardize practice. MOPC fostered coordination of services, promoted collaboration amongst the CMCs, identified best practices and collected quantitative and qualitative data across the 12 CMCs. MOPC also presented to various interest groups as part of the statewide outreach effort and delivered relevant training to CMC staff and mediators. Additionally, MOPC took the responsibility of outreach and presenting housing mediation to various interest groups on a statewide level. MOPC reported to DHCD weekly on caseload data, outreach activities and the progress of HMP implementation and met with CMCs on a biweekly basis as part of program monitoring.

Community Mediation Centers (CMCs)

As the direct service providers, CMCs were responsible for deploying 1-2 dedicated staff members as HMP coordinators to serve as liaisons with EDI partners and coordinate the delivery of remote mediation services which included intake, screening, scheduling and coordinating mediation sessions, and post-mediation follow up as needed. Additionally, CMCs ensured that coordinators and mediators were properly trained and oriented to the HMP and overall EDI initiative. CMCs also provided weekly and monthly reports on their case referrals and outreach efforts as well as participated in weekly meetings with MOPC to identify design or practice issues, troubleshoot challenges, and share innovations they developed for the HMP.

DHCD-Supported Housing Agencies (HCECs, RAAs, TPPs)

Housing agencies were identified as key referral partners for the upstream cases for HMP and, as such, were responsible for providing basic information about mediation and for referring tenants and landlords who would benefit from mediation in resolving housing related disputes and other issues affecting housing stability. Additionally, housing agencies communicated with HMP coordinators regarding mediation referrals as well as information about the rental assistance applications for parties engaged in the mediation process.

Legal Services (COVID Eviction Legal Help Project)

Various legal aid organizations and groups under the framework that became known as CELHP were also considered referral partners and were directed to refer tenants and landlords to mediation. Once Notices to Quit were served and throughout subsequent legal proceedings, cases were eligible for CELHP assistance subject to income limitations. Referrals to the HMP services could be made at any point on that continuum.

Courts (District, BMC)

The District Courts and Boston Municipal Court (BMC) were referral sources for the HMP, and their role included educating tenants and landlords involved in eviction proceedings about the availability of mediation services, communicating directly with CMC staff in making mediation referrals, receiving status reports on the delivery of mediation services, and arranging for relevant judges and court staff to be oriented to community mediation to promote effective coordination with CMCs. Their role in the HMP expanded to making referrals prior to the hearing stages of eviction actions.

3. Delivering Program Activities and Services

The HMP provided both upstream and downstream mediation services to landlords and tenants at any stage of a housing dispute where tenants were at risk of being evicted due to COVID-related financial problems. Upstream housing mediation services were an expansion of CMC services, which originally focused on mediating court-referred (that is, downstream) eviction cases, and thus the bulk of the effort of the HMP in FY21 was focused on this expansion. These upstream cases included cases which originated from a variety of sources: self-referrals (which could be from individuals searching the internet, from 211 providing information, word-of-mouth, social media, a newly developed housing page on the Resolution MA website etc.), referrals from non-profit organizations, and referrals from housing agencies. Referrals of upstream cases were expected from HCECs and RAAs, and to facilitate this, MOPC, DHCD, and a representative from the HCECs met to develop referral guidelines and processes.

CMCs continued to offer housing mediation services for downstream cases as they had done pre-pandemic, with some expansions. First, CMCs made services available to parties post-court proceedings. Second, CMCs worked closely with the District Courts in their service areas to determine additional touch points with parties for mediation. Some points of contact appeared at the case management conference stage of the court process (as opposed to the trial stage), which was a new stage that the District Court developed in response to providing remote services during the pandemic. Some CMCs initiated processes for receiving case referrals prior to the trial date and providing the court with community mediation contact information to be shared with parties before trial.

Local Case Coordination and Remote Mediation

To provide expanded services, CMCs needed to build their staff and mediator capacity not only to interface with new partners but also to do so in the virtual world, as necessitated by the lockdowns of the pandemic. This was a large undertaking and investment of time and resources by the CMCs. To ramp up for the HMP, CMCs either designated existing staff as the HMP coordinators and/or hired new staff to administer the program. All the staffers involved had to be oriented to the EDI and thus participated in trainings/webinars presented by each type of EDI partner about the services offered. CMCs certified that staff members received onboarding to understand the complex and comprehensive offerings of the EDI. Additionally, CMCs assessed their volunteers' and

staff mediators' comfort and competency in using virtual environments as well as their competency in mediating housing disputes and provided relevant training. As part of the ramp up and support of CMCs, MOPC offered both a refresher and basic summary process/eviction mediation training and set up a shared resource folder accessible to all CMCs which contained training materials, requirements, best practices, and documentation for ease of reference.

Referrals to mediation came from various sources, including EDI housing agencies (Housing Consumer Education Centers, Regional Administering Agencies, Tenancy Preservation Program), individual self-referrals, legal services, District Courts, Boston Municipal Court, and other non-profit organizations. Upon receiving a case referral, HMP coordinators followed up with parties to educate them about mediation, provide information about additional resources and referred parties to EDI partners as needed. If after speaking with the HMP coordinators about mediation and parties agreed to proceed, the coordinators scheduled mediations, assigned mediators, and provided any necessary follow up after the mediation. Coordinators would then report back to referral agencies as needed.

CMCs also needed to develop a workflow to manage cases virtually, including gathering signatures for various forms (agreement to participate in mediation, mediated agreements, etc.), addressing technical issues that could prohibit mediators or parties from participating in a mediation, and developing alternatives for participation if access to technology became a barrier. This greatly increased the amount of time HMP coordinators and other CMC staff spent on case management and coordination with EDI partners.

Additionally, MOPC, with input from the CMCs, developed a guide/protocol document on effective practices for remote mediation, along with sample language for forms to address the unique nature of such a forum that CMCs could adopt. MOPC and the CMCs also developed protocols for using interpreters and for sharing mediators from other CMCs as needed.

Coordinated Outreach Efforts

At the outset of the EDI, DHCD and all EDI partners anticipated a substantial demand for housing counseling, tenancy preservation and mediation services, which resulted in service delivery being the initial focus of service ramp up and a limited focus on public outreach. DHCD oversaw the overall messaging, creating public service announcements (PSAs) launched across the Commonwealth that mentioned all available resources, including community mediation. DHCD also coordinated and fostered the outreach between EDI agencies. Despite setting up structures for EDI partner referrals, the actual number of referrals to mediation were far below the anticipated numbers. It became clear that a more nuanced approach to outreach was needed. Consequently, MOPC developed messaging on mediation for specific audiences (e.g., landlords) and for the Resolution MA website. In addition, MOPC developed FAQs that were used for outreach to EDI partners and for the EDI website. Through the communications team at the Executive Office of Housing & Economic Development, MOPC also developed an outreach flyer

targeted at landlords and tenants which was then made available for all CMCs. MOPC also met with each CMC to discuss outreach efforts to courts and EDI partners and the impacts that those efforts had on referrals to mediation.

4. Program Monitoring and Planning

Program monitoring and planning had two interrelated components: data collection and monitoring/oversight.

Data Collection

CMCs submitted multiple reports as well as case forms for the monitoring and evaluation of the HMP. Case data and outreach reports were submitted weekly to monitor the activities and troubleshoot any issues that arose. MOPC collected this information, compiled it, followed up with CMCs when further information was required to understand the data, and submitted the report with findings/insights to DHCD each week. Additionally, CMCs entered data into the uniform case management database and reporting system overseen by MOPC known as MADtrac which was specifically adapted to accommodate HMP data needs. On a monthly basis, CMCs submitted reports to MOPC from MADtrac that provided both case level detail and summarized information on the CMC's program level activities for that month. Some data categories were not included in both the weekly report and MADtrac, e.g., open cases were recorded for the weekly report while closed cases were recorded in MADtrac. In addition to reports and case forms, CMCs were required to ask participants and mediators to fill out online feedback surveys to collect data on the impact of the mediation services and the HMP and indicate their willingness to be interviewed by MOPC about their mediation experience.

Monitoring/Oversight

Multiple levels of monitoring of the HMP were instituted to ensure that the program was well-managed as one component of the broader EDI. MOPC facilitated weekly meetings with the CMCs to monitor implementation as well as problem-solve and respond to issues and unexpected developments as they arose. These weekly meetings changed to biweekly meetings as the program moved out of the initial implementation stage. A weekly update was sent out by MOPC to provide crucial information, report changes and other important matters, which were reprised at the weekly meetings with the CMCs. DHCD also met with MOPC on a weekly basis to monitor implementation as well as problem-solve and respond to issues and unexpected developments that affected the HMP from the EDI perspective. Through these meetings, several challenges were identified as affecting referrals to mediation. These included court closures and slow court reopenings, establishing new upstream referral sources, and the lack of understanding of mediation.

Appendix B: Housing Mediation Literature Review

An extensive review of the literature on evictions and housing mediation preceded the design of the HMP evaluation plan, research questions and instruments. Below is the full literature review.

Background

About one-third of the US household population (that is, 47.6 million households) lives in rented housing (Tokarz, Stragand, Geigerman, & Smith, 2020). Among the housing disputes that occur between tenants and landlords— such as evictions, finances, housing conditions, landlord-tenant relationship, discrimination, etc. (McGillis, 1979), the removal of tenants from their property, that is their displacement, by landlords through evictions poses the greatest threat to housing stability. Over time, an increasing number of households lost their rented homes through eviction (Brennan, 2020; Hoke & Boen, 2021, February 2). In response to this situation, eviction discussions in the housing literature have been heavily focused on the consequences of evictions for renters and much less so on the landlords' view of eviction, e.g., as a means of protecting their housing investment (Ebner & Press, 2020). The prevalence and high stakes of eviction elevate the importance of examining this phenomenon and gaining an understanding by way of a review of the eviction literature. Such a review can prove instructive despite limitations on its arising from the incompleteness and largely descriptive or observational nature of eviction-related data (Hartman & Robinson, 2003; Hoke & Boen, 2021).

HISTORY OF LANDLORD-TENANT LAWS:

The right to housing is not enshrined in US constitutional law (Hartman & Robinson, 2003). Before the 1960s, matters dealing with rental housing and the landlord-tenant relationship were largely governed by common law principles, which provided that the tenant could gain possession of premises upon agreement with the owner/landlord in exchange for the payment of rent to the latter and care for the premises (Hartman & Robinson, 2003). From the 1960s on, landlord-tenant laws evolved, detailing and expanding the legal rights and responsibilities of both tenants and landlords to varying degrees depending upon state and local laws. Massachusetts landlord-tenant law has been considered among the most robust in the nation. Unlike, say, Milwaukee and other midsize cities, Boston, along with New York City, was considered to have robust tenant protection laws, i.e., “a stalwart tradition of tenant unionizing[,] an economically-diverse rental population[, and] tooth[y] tenant protections” (Greenberg, Gershenson, & Desmond, 2016, p. 123). Subsequent decades qualified expectations for a positive impact on housing conditions from landlord-tenant law reform. By the 1980s, the changes in landlord-tenant law in Massachusetts and elsewhere did not lead to improved housing for all: “Empirical studies in Boston, Chicago, Detroit, and San Francisco, as well as observations of activity in Kansas City and St. Louis, have noted a disappointing, harsh, but observable reality: landlord-tenant law reform, as administered by the courts, has not improved the housing conditions of low- and moderate-income tenants” (Salsich & Fitzgerald, 1986, p. 793).

Landlord-tenant laws in Massachusetts:

According to information provided by the Massachusetts government to the public (see the government website for the Office of Consumer Affairs and Business Regulation), current state landlord-tenant law provides, among other things, that tenants are responsible for paying rent and complying with the conditions of the rental lease in effect. They have a right to premises that are safe and habitable, the breach of which right authorizes the tenant to withhold rent under specified circumstances. Tenants are also protected against discrimination – based upon their race, religion, ethnicity, age, marital status, disability, etc., against retaliation for the exercise of their legal rights, and against the landlord’s unreasonable entry onto the premises. In turn, landlord responsibilities include ensuring and maintaining the safety and habitability of the rented premises, refraining from shutting down utilities or rendering the premises uninhabitable except for repairs or emergencies, and screening prospective tenants. Landlords have the right to receive punctual rent payments, to raise the amount of rent under specific conditions, to get tenant compliance with the tenancy agreement, to enter the premises for stated reasons, and to evict the tenant under stipulated circumstances, including violation of the terms of the tenancy.

Common housing disputes between landlord and tenant involve evictions, security deposits, and problematic housing conditions such as pervasive vermin and garbage, leaks from windows and roofs, defective locks, and inadequate heating (McGillis, 1979, January, citing a 1977 study of low-income Boston residents). Most of the disputes regarding housing conditions are not brought to court: “Despite the severity of these conditions, the survey found that many housing problems were not viewed as legal problems by the respondents even though legal solutions were potentially available” (McGillis, 1979, January, p. 245). In contrast, evictions are usually addressed by the court. Rent arrearage is the most common reason for eviction. Regarding Massachusetts evictions, only a small minority of residential evictions were for reasons other than non-payment of rent (Massachusetts Trial Court, Department of Research and Planning, 2021, June 13).

Eviction is the removal of the occupant of rented premises by the property owner or landlord (Greenberg et al., 2016). The tenant’s removal may be accomplished either through formal or informal means. Formal evictions are effectuated through specified court procedures (Greenberg et al., 2016). The Massachusetts eviction process, for example, is regulated by state law, and the tenant’s removal is subject to a court order (see Office of Consumer Affairs and Business Regulation, 2021, Tenant rights). Typical grounds for a landlord’s request for an eviction order, which are also applicable to Massachusetts evictions, include the tenant’s non-payment of rent, lease violation, premise damage, illegal use of premises, denial of landlord’s reasonable access to premises, non-renewal of lease, etc. (Hartman & Robinson, 2003; Office of Consumer Affairs and Business Regulation, 2021, Tenants guide). Massachusetts tenants may contest their eviction by articulating affirmative defenses and counterclaims in a document responsive to the landlord’s Summary Process and Complaint – that is, their Answer – which may include claims that the landlord retaliated against the tenant’s exercise of legal rights, discriminated against the tenant, failed to properly comply with the eviction procedure, infringed upon the covenant of quiet enjoyment, or violated the warranty of habitability, the security deposit law, or the consumer protection law (Office of Consumer Affairs and Business Regulation, 2021, Tenants guide). Although defenses

that are omitted from the tenant's Answer are officially excluded from consideration in the Massachusetts court process, one Community Mediation Center case coordinator, who deals with housing cases, reported that for summary process cases, "courts are much more permissive and typically they will allow the defendant (tenant) to assert their defenses and counterclaims at any point during the process, which may trigger a continuance for the landlord to respond."⁴ Informal evictions, which occur outside the purview of the court, may run the gamut from the landlord's refusal to continue renting the premises to the tenant to constructive evictions, where premises are rendered uninhabitable, to illegal evictions, which involve violations of the law (Brennan, 2020; Greenberg et al., 2016).

FREQUENCY OF EVICTIONS:

The threat to housing stability posed by evictions has grown over the last 20 years. Between 2000 and 2016, 61 million eviction cases were filed, and executed evictions increased by more than 70%, climbing from around one-half million (i.e., 518,873) in 2000 to nearly 900,000 (i.e., 898,497) evicted households in 2016 (Benfer, Robinson, Butler, ... & Neumann, 2020, August 7, citing Princeton University Eviction Laboratory; Hoke & Boen, 2021, February, 2; Tokarz et al., 2020). By 2019, annual court eviction filings put more than two million renter households at risk of losing their homes through court evictions alone (Tokarz et al., 2020). In Massachusetts, 17,029 court orders for the execution of residential evictions, or 45% of the 37,956 residential eviction cases filed, were issued during 2019 (Massachusetts Trial Court, Department of Research and Planning, 2021, June 13)

The impact of the Coronavirus Disease 2019 (COVID-19) pandemic on the economy and governmental attempts to mitigate that impact affected the frequency of eviction case filings and evictions during the pandemic period of March 2020 to the present.

COVID-19 is a world-wide affliction that was recognized as a pandemic by the World Health Organization (WHO) on March 11, 2020 (Cucinotta & Vanelli, 2021, March 19). The disease has wreaked havoc globally on people's lives and livelihoods and thus on public health and on the economy of the US, including Massachusetts. Between January 21, 2020 and June 10, 2021, 33,246,578 people across the nation became ill and 596,059 died from COVID-19 (CDC, COVID data Tracker, 2021, June 11). In Massachusetts, 708,459 COVID cases and 17,922 COVID-related deaths were reported during the same period (CDC data tracker, 2021, June 11). COVID's impact on people's lives combined with the public health measures taken to contain the spread of the disease, such as constraints on in-person interactions, depressed economic activity. The three sectors hardest hit by the pandemic in terms of job loss were leisure and hospitality, education and services, and government (Congressional Research Service, 2021, May 20). Unemployment jumped during the pandemic. Job loss was greatest among Blacks, Hispanics/Latinx, younger workers, and workers with less education. Across the US, the unemployment rate of 3.5% in February 2020 (pre-pandemic) climbed precipitously to 14.8% in April 2020 (early pandemic period) and finally declined to 6.1% by the following April (later pandemic period), a rate that was still higher than the

⁴ March 22, 2021 email exchange.

unemployment rate from pre-pandemic times. Massachusetts unemployment numbers mirrored national trends, rising to 16.4% in April 2020 from a pre-pandemic low of 2.8% and then dropping to 6.5% by April 2021 (Congressional Research Service, 2021, May 20; Department of Unemployment Assistance; Lisinski, 2020, November 20).

Most eviction filings are brought for non-payment of rent (Bieretz, Burrowes, & Bramhall, 2020, April; Hare, 2020, January). Massachusetts eviction filings are no exception. The eviction data presented by the state for the last few years are accompanied by the reminder that rent arrears accounted for a large majority of evictions: “For the Boston Municipal and District Courts, executions include a small proportion of eviction cases based on grounds other than non-payment of rent.” Indeed, as of June 13, 2021, 2,454 residential evictions were issued since October 18, 2020 for nonpayment of rent (Massachusetts Trial Court, Department of Research and Planning, 2021, June 13). As in Massachusetts, the shortfall in rent payments may be attributed to renters’ low incomes and a dearth of affordable housing throughout the country. Nationally, close to half of US renters (47.4% or 20.5 million households) in 2017 paid more than 30% of their income on rent, almost one-fourth (10.8 million households) paid at least 70% on rented housing and such “high levels of burden underscore the difficulty for households with the lowest incomes to find housing in the private market” (Veal & Spader, 2018, December 7). Similarly, housing in Massachusetts is expensive, affordable housing is scarce, and, as a result, “high housing costs in Massachusetts place significant financial pressure on the state’s residents, and a lack of affordable housing is of special concern for the state’s extremely low-income (ELI) renter households,” 79% of whom were rent-burdened in 2016 (Chiumenti, 2019, p.3). “Renters with low incomes are more severely cost-burdened and thus are at greater risk of eviction than other renters...” (Trescon, Greene, Fiol, & Junod, 2021, April, p. 2). Other factors that may heighten the risk of eviction include family size, gender, race/ethnicity, behavior and health issues (Tsai & Huang, 2019). Large households, particularly those with children, increased eviction risk in the US, though not in other western countries like Canada, the United Kingdom, and the Netherlands. Behaviors related to substance abuse were associated with eviction risk as were health problems, both physical and mental (Tsai & Huang, 2019, citing studies). People of color faced a higher risk of eviction than Whites (Greenberg et al., 2016). The combined factors of gender and race/ethnicity were found to elevate the risk of eviction. Black and Latinx renters, and Black and Latinx women renters, were disproportionately subjected to eviction filings and evictions, and even during the pandemic when eviction filings were lower than usual, “Black and female renters received a disproportionate share of these filings” (Hepburn, Fish, Lemmerman, ... & Desmond, 2021, April 27, citing studies).

Despite the widespread financial harm caused by the pandemic – which was reflected in the rise in unemployment – government actions to address and recover from the pandemic helped prevent rates for eviction filings and evictions from climbing like unemployment rates during the pandemic (Rios, 2021, May 5). Despite opposition from landlord groups decrying the infringement of their control over their property, eviction moratoriums were imposed at various government levels (Arnold, 2021, March 29.). A national eviction moratorium (slated to end by July 31, 2021), instituted in September 2020 by the U.S. Centers for Disease Control and Prevention to prevent the spread of the coronavirus by preserving tenants’ housing, halted evictions for nonpayment of rent

(Cowin, Martin, & Stevens, 2020; Arnold, 2021, March 29.; Housing Community & Development, 2021, April 14). Massachusetts' suspension of evictions, effective as of April 2020, encompassed all evictions, not just those for rent arrears. In addition, the federal government invested heavily in vaccine development and pumped nearly \$4 trillion of financial assistance into the economy, including expanded unemployment insurance payments and \$50 billion in rental assistance (Mass.gov. About COVID-19, 2021; Wu & Zarracina, 2021). Financial support was also distributed by various state and local governments. When Massachusetts's eviction moratorium was allowed to expire in October 2020, the state set up its Eviction Diversion Initiative, a \$171 million program for promoting housing stability (Lisinski, 2021, April 16). The impact of these government measures was to depress eviction rates during the pandemic. On average, 3.7 million eviction filings were recorded annually before pandemic times. (Fish, Lemmerman, Louis, & Hepburn, 2020, December 15). For example, eviction case filings in a sample of five states that imposed eviction moratoriums at some point (i.e., Connecticut, Delaware, Indiana, Minnesota, and Missouri) decreased by 43% from a total of 150,112 during 2016 to 85,535 during the 15 months of the pandemic (from March 15, 2020 to June 5, 2021) (Dewitt, 2020, June 17; Eviction Lab, 2021, June 6). In a separate analysis that was based on data from five state court systems, twenty-six county court systems and one municipal court, the number of eviction filings declined by 65% during the initial nine-plus months of the pandemic – that is, from March 15 to December 31 of 2020 – compared to typical numbers from past years (Hepburn et al., 2021, April 27). As for Massachusetts, its residential eviction filings and executions in 2016 were roughly similar to those in 2019 (Dewitt, 2020, June 17; Massachusetts Trial Court, Department of Research and Planning, 2021, June 13). There were 37,121 eviction filings and 15,708 executions in 2016 compared to 37,596 filings and 17,209 eviction executions in 2019. However, during the following year, i.e., in 2020, which encompassed the onset of the pandemic and associated governmental reactions, Massachusetts residential eviction filings and executions decreased markedly from 2019 – by 59% to 15,353 filings and by 73% to 4,655 evictions. Over these years, a large majority of Massachusetts evictions were for nonpayment of rent (Massachusetts Trial Court, Department of Research and Planning, 2021, June 13).

The recent pandemic-related decline in eviction filings and executions is expected to be temporary. The current outlook for post-pandemic rental housing stability across the nation, including Massachusetts, is gloomy. According to May 2021 news reports, the US Census Bureau calculated that approximately seven million US residents still owed rent money (Arnold, May 5, 2021). As the course of the pandemic wanes, vaccinations against COVID-19 proceed, pandemic-related restrictions ease, and government financial assistance and eviction moratoriums end, evictions are expected to surge (Tokarz et al., 2020, 243-244).

CONSEQUENCES OF EVICTION BEFORE & DURING COVID:

Evictions are costly. Although evictions exact a toll on both landlord and tenant, the burden of loss falls most heavily on tenants. Indeed, the adverse consequences of eviction permeate the lives of tenants. Admittedly, both tenant and landlord incur direct expenses from court evictions. Between court fees, charges for implementing the eviction, lost rent revenue, and other eviction-related expenses such as finding a new tenant, an eviction –

at least those in the Boston area – can cost private landlords an estimated \$6,000 and housing authorities about \$10,000 (Bieretz et al., 2020, citing Desmond & Gershenson, 2016; Brennan, 2020). Tenants on the losing side of the eviction case may have to not only pay off rent arrears and the landlord’s court costs, but also pay for the cost of moving and of retrieving or replacing left-behind possessions (Bieretz et al., 2020). Nonetheless, the price of eviction for the tenant does not end there but persists to the detriment of the tenant’s opportunities for housing, health, finances, social situation, and uninterrupted education for their children (Hartman & Robinson, 2003; Tsai & Huang, 2019).

Eviction tends to restrict the tenant’s subsequent housing opportunities. The eviction judgment, even the filing of the eviction case, are registered in the court records of several jurisdictions (e.g., in Michigan and Minnesota), where they endure irrespective of the outcome of the eviction case (Ebner & Press, 2020; Trescon et al., 2021). This record becomes part of the tenant’s rental history and may be held against the tenant as they search for new housing and which “... effectively excludes tenants who have experienced a filing from the formal market, creating an additional barrier to them finding stable housing” (Trescon et al., 2021, p. 5). And so, the mere filing of an eviction case in Massachusetts establishes a record that, without regard for fault or end-result, may prejudice the tenant’s search for new housing. In 2013, access to Massachusetts eviction records became easier when records were placed online by the Massachusetts Trial Court purportedly to facilitate parties’ management of their case, but “the unintended consequence is that the information is being used as a free and unregulated tenant screening service” (Pass the HOMES Act).

If evicted renters find housing despite the dearth of affordable housing and their negative rental history, these housing conditions are likely to be substandard, located in neighborhoods of lower socioeconomic status or with higher crime rates and which expose occupants to internal and external pollutants that put health and safety at risk (Brennan, 2020). Other evicted renters may become homeless: “Tenant evictions are a significant cause of homelessness” (Brennan, 2020; Hartman & Robinson, 2003; Holl, Van Den Dries & Wolf, 2016, p. 532). A case in point would be the more than one-third of families staying at a New York City homeless shelter who were there because of eviction (Brennan, 2020). Evictions also burden state coffers owing to state assistance for the homeless. In Massachusetts, as of 2010, emergency accommodations and services for the evicted homeless cost an average of \$26,620 per case (Tsai & Huang, 2019, citing Culhane & Byrne, 2010).

Tenants may face greater financial hardship after eviction. Job loss is more likely for evicted tenants (Brennan, 2020, citing studies in Milwaukee and North Dakota; Trescon et al., 2021, April). As a result, the tenant’s living situation may become even more insecure since landlords tend to be more troubled about unemployment than about temporary financial difficulties (e.g., a health crisis) due to the greater uncertainty surrounding the tenant’s financial future (Greenberg et al., 2016).

Evictions have also been associated (nature of association unknown) with declines in tenant health, whether physical or mental (Brennan, 2020; Greenberg et al., 2016; Hartman & Robinson, 2003). In a study of symptoms of depression in young adults who

were evicted compared to those who had not been evicted, symptoms were significantly more frequent in the evicted group ($p=0.003$). Moreover, social stress proved to be a mediating factor in 18% of the associations between eviction and depression symptoms (Hoke & Boen, 2021 February 26). Housing instability has also been linked to anxiety, higher suicide risk, depression, high blood pressure, lowered diabetes control, chronic illness, among other health issues (Hoke & Boen, 2021, February 26, citing studies). The host of problems associated with eviction has led some researchers to conclude that "...the overwhelming nature of being forcibly removed from one's home makes eviction a particularly salient stressor in the lives of a growing number of American households. Given that eviction exposes households and individuals to a host of psychosocial, socioeconomic, and physical risks, eviction represents a growing threat to population health in the US" (Hoke & Boen, 2021, February 26, pp. 3-4).

THE DISPARATE IMPACT OF EVICTION ON POPULATION GROUPS:

Renters engaged in disputes with their landlord tend to be a diverse lot. Consider the typical docket of the Boston Housing Court, where defendants in the court's 8,000 annual cases represent "a wide range of incomes and demographic characteristics" (McGillis, 1979, January, p. 246). Nevertheless, minorities and lower-income individuals constitute a disproportionate share of renters (Hartman & Robinson, 2003, citing incomplete data). Despite the diversity of tenant disputants considered as a whole, the burden of eviction falls most heavily on minorities, women, and the economically disadvantaged (Hartman & Robinson, 2003; Bieretz et al., 2020, April). The role of discrimination to explain the disparate impact of eviction on certain population groups is unclear (Greenberg et al., 2016). When the stated reason for the eviction demand is facially neutral and the exercise of discretion by the landlord to act on that reason is permissible, detecting the operation of discriminatory intent becomes extremely difficult. Moreover, research into the relationship, if any, between discrimination and eviction has been scant (Greenberg et al., 2016). Yet, a showing of statistical evidence that a "policy or practice has a greater impact on protected class members than others," could support a colorable claim of disparate impact (Baird, 2004, p. 43). It is widely recognized that certain population groups have been disproportionately subjected to evictions and the threat of eviction.

Lower-income renter households, including those of Black and Latinx renters, have been disproportionately subjected to evictions (Bieretz et al, 2020, April). In various cities, 80% of tenants facing eviction have been people of color (Greenberg et al., 2016). In addition, eviction filing rates tended to be higher for Black and Latinx women than for Whites and men (Trescon et al., 2021, April, citing Hepburn, Louis, & Desmond, 2020). A study into the eviction risk of renters in Milwaukee found that the risk of eviction was elevated for Hispanic renters living in majority White neighborhoods and that Hispanics' eviction risk was greater when their landlords were non-Hispanic. In fact, "Hispanic renters who regularly missed rent payments and lived in predominantly white neighborhoods were almost twice as likely as other habitual late-rent payers to be evicted (38% versus 21%)" (Greenberg et al., 2016, p. 144). Whether other minority renters living in non-minority areas of other cities face a higher risk of eviction remains an open question. Nonetheless, the impact of the intersection of race and neighborhood composition on evictions for Milwaukee's Hispanic renters may be instructive for other mid-size US cities with landlord-tenant laws comparable to those in Milwaukee

(Greenberg et al., 2016). The data supporting the disparate impact of eviction led one researcher to conclude that the “evidence of higher eviction risks for Black women, households with children, and Latinx households living in majority-white neighborhoods indicate that direct and/or structural racial discrimination are also root causes of evictions” (Brennan, 2020, 49).

Minorities continued to be disproportionately impacted by the pandemic with respect to their health, financial circumstances, and eviction risk. The rates of COVID infection, hospitalization, and death were higher for Black/African American, Hispanic/Latinx, and American Indian or Alaska Native people (CDC, 2021, June 17). Blacks and Hispanics were among those workers most heavily impacted by unemployment during the pandemic (Congressional Research Service, 2021, May 20). From March to September 2020, Black and Latinx renters were more likely to be notified about an eviction filing or eviction than were White renters (Trescon et al., 2021, April, citing Cunningham, Hariharan, & Fiol, 2021). A study of the association between eviction filings and Boston neighborhoods during the first year of the pandemic (from February 28, 2020 to February 28, 2021) found that, on average, eviction filing rates for census tracts with a majority of Black renters was 3.8 times greater than for tracts with White renter majorities (Walker, 2021). The totality of the pandemic statistics led some researchers to conclude that the impact of COVID was greatest for victims of structural racism: “structural racism means that the people most at risk of experiencing serious health complications, of being labeled an essential worker at a low wage, and of facing unemployment are also at greatest risk of housing instability” (Cohen & Noble, 2020, May 16, citing Garg et al., 2020).

INTERVENTIONS THAT SEEK TO TACKLE THE PROBLEM OF EVICTION:

The task of achieving housing stability for the long-term requires dealing with the root causes of evictions, including an affordable housing shortage, financial hardship, reduced job opportunities, inadequate legal rights for renters, among others (Brennan, 2020; Greenberg et al., 2016). Remediation of these root causes calls for increasing the supply of affordable housing, dismantling direct and systemic racism, expanding gainful employment, extending and reinforcing renters’ rights, and so on, all of which require policy changes and long-term investments of time, energy, and social capital on the part of government and communities. Meanwhile, the housing crisis exemplified by evictions demands immediate interventions (Brennan, 2020). Current efforts to decrease the frequency and impact of evictions include efforts to establish more tenant protections as well as assistance in responding to impending eviction in the form of financial advice and aid, legal representation and assistance, and diversion programs like mediation, etc. with varying degrees of success. No one of these interventions completely resolved the complex problem of eviction.

Expungement or sealing of court eviction records:

State action regarding regulation of access to court eviction records has the potential for immediate application along with a sustained impact on eviction reduction (Brennan, 2020; Ebner & Press, 2020; Hare, 2020). Since landlords prefer responsible and financially reliable tenants, the presence of an eviction or eviction filing in a tenant’s rental history may be held against the tenant seeking housing (Brennan, 2020; Ebner & Press, 2020; Hare, 2020; Pass the HOMES Act.; MassLandlords.net, 2021, July).

Accordingly, public access to court eviction records has been limited by statute in several jurisdictions (Hare, 2020). Thus, California restricts disclosure of housing records involving tenants “who redeemed, prevailed, or settled their [housing] cases” (Hare, 2020, p. 151). Minnesota tenants may request expungement of their eviction by the court even when the eviction is warranted (Ebner & Press, 2020). The Minnesota experience, however, demonstrates that tenant awareness of the availability of expungement in jurisdictions that allow expungement is low until measures are taken to inform tenants about their right to restrict access to their court record. When mediation agreement forms used by a county court mediation program were changed to incorporate options for an expedited expungement, “*in every mediated case*, the landlord and the tenant discuss expungement,” and expungements increased by 25% (Ebner & Press, 2020, p. 105, emphasis in original; Trescon et al., 2021). In Massachusetts, court eviction records are open to the public through traditional and electronic means.

Advocates, like those in non-expungement/sealing states like Florida and Massachusetts, support adoption of a tenant’s right to expunge or seal their court eviction records to protect tenants from being blacklisted by landlords from housing (Trescon et al., 2021). During the current legislative session in Massachusetts – that is, the 192nd General Court – two bills were presented, SB.921 and HB.1808, which provided for the sealing of court eviction records. Supporters of these bills urge that “eviction records should only be online, publicly available or reported by a tenant screening company when a landlord wins on the merits or a tenant breaks an agreement and is evicted by a constable. If an eviction case is not the fault of the tenant, is dismissed, or ends with a tenant satisfying an agreement, these records should not be made public” (Pass the HOMES Act). Landlord opposition to eviction record sealing, though, is propelled by the usefulness of screening prospective tenants (MassLandlords.net, 2021, July).

The extent to which the availability of the expungement or sealing of court records improves tenant’s ability to find housing or contributes to the mitigation of eviction’s damaging impact is unclear. Besides applying only to one type of eviction, this expungement/sealing arrangement would probably not prevent the creation of informal tenant blacklists by landlords. Consider, before on-line posting of Massachusetts court records was instituted, landlords routinely shared eviction information about tenants with other landlords (MassLandlords.net, 2021, July).

Legal representation of parties in landlord-tenant cases:

The evidence for success in protecting the legal rights of parties in housing disputes is strongest for legal representation. Attorney representation is an important determinant in the outcome of litigation or adjudication. Nonetheless, the right to an attorney is not constitutionally required for civil matters, including eviction proceedings (Hartman & Robinson, 2003). Generally, in eviction cases, 90% of landlords have legal representation while only 10% of tenants do (Bieretz et al., 2020). Massachusetts residential eviction cases exemplify this disparity in legal representation. Between October 2020 and June 2021: 16.1% of 20,894 plaintiffs in eviction cases were pro se while 93.8% of 26,971 defendants were pro se (Cohen, M. & Noble, 2020, May; Massachusetts Trial Court, Department of Research and Planning, 2021, June 13). Unequal access to legal representation creates a power imbalance between parties which favors landlords (Bieretz

et al., 2020). In April 2021, Washington became the first state to grant indigent tenants a right to counsel in eviction proceedings (Weiss, 2021, April 26). Tenant right-to-counsel laws are under consideration by several other states, including Massachusetts. Massachusetts bills HB 1436 and SB 874, if passed, would provide the right-to-counsel to tenants throughout the state. Cities with tenant right-to-counsel laws include San Francisco, whose “No Eviction without Representation Act” became effective in 2019 (Eviction Defense Collaborative).

As a result of the effectiveness of legal representation in housing disputes, outcomes for tenants experiencing the eviction process are better when they have legal representation (Bieretz et al, 2020). A review of 1,502 summary process cases at three Massachusetts District Courts revealed that landlords obtained executions in 75% of adjudicated cases and 52.7% of mediated cases while tenants represented by attorneys prevented executions in 62.7% of cases. Moreover, problems with housing conditions were raised by all represented tenants unlike most mediating tenants who failed to raise such problems (Kurtzberg & Henikoff, 1997). In New York City, evictions dropped “more than five times faster” in zip codes served by a legal aid program whose attorneys represented renters in eviction cases compared to zip codes where the program did not operate (Trescon et al., 2021, p. 3).

Indeed, “several studies demonstrate that access to legal services may improve outcomes in housing cases” (Greenberg et al., 2016, p. 138). Thus, in a randomized Massachusetts District Court study, tenant defendants who were fully represented by an attorney were less likely to lose possession of their housing and more likely to receive larger amounts of money than were tenants who had limited attorney representation (Greenberg et al., 2016). A Boston eviction study revealed that twice as many fully represented tenants (two-thirds) than unrepresented tenants (one-third) were allowed to remain in their homes (Bieretz et al, 2020, citing Boston Bar Association Task Force on the Civil Right to Counsel 2012). A New York City study showed that representation by volunteer attorneys led tenants to receive significantly fewer eviction warrants than did unrepresented tenants ($p < 0.001$) (Holl et al., 2016). Finally, a comparison study of housing case outcomes for those mediating tenants who had received prior training in affirmative defenses, for the mediating tenants without affirmative defense training, for tenants whose cases went directly before a judge, and for tenants who had legal representation showed that represented tenants had the best outcomes – the lowest eviction rate and the highest rates for dismissals, abatements, and adjournments (Baird, 2004). Despite the evidence of its effectiveness in protecting party rights, the shortage of affordable or free legal services limits reliance on attorney representation for reducing evictions (Greenberg et al., 2016).

Providing financial counseling:

Receipt of debt advice by tenants was associated with decreases in the amount of rent they owed (Holl et al., 2016, citing a United Kingdom study). Whereas rent arrears belonging to tenants decreased substantially (by 37%) following referral to debt advice, the arrears of unadvised tenants increased (by 14%) (Holl et al., 2016). The long-term consequences of receiving financial advice on managing debt and on preventing evictions, however, were unavailable.

Providing financial assistance:

Financial assistance to renters and landlords may be especially useful to avert eviction when the housing dispute involves unpaid rent. Consider the government's response to the pandemic's actual impact on the economy and potential impact on the frequency of evictions. Recognizing the stress on the economy and the straitened financial situation of people which were caused by the pandemic resulted in the provision of federal funds for distribution by states to mitigate the pandemic crisis. However, the roll-out of this financial aid has been slow. In some states, less than 5% of federal funds were distributed as of June 2021 (Fessler, 2021, June 24). The \$46 billion in rental aid approved by Congress in December 2020 and March 2021 has reached relatively few landlords and tenants so far due to complications with program operations in various regions of the country, landlord non-participation, unavailable technology, documentation requirements, among other challenges. And "the longer it takes to distribute the money, the more landlords suffer destabilizing losses, and tenants risk eviction" (DeParle, 2021, May 4). The size of the eviction problem according to current estimates may be indicated by the seven million renters, disproportionately people of color and low-income households, who owe back rent (Fessler, 2021, June 24). Massachusetts is a case in point. Despite the \$93.4 million in assistance to 24,901 households, including renters, landlords, and vulnerable homeowners, during the first third of 2021, close to \$800 million in federal housing funding remains unspent as of June 2021 (Linski, 2021, June 4). This financial aid is expected to lessen implementation of evictions once eviction moratoriums terminate.

Financial aid is important to reducing evictions in the short term by at least postponing evictions if not eliminating them altogether. Consider the situation where renters facing homelessness due to a financial crisis obtained interest-free five-year loans to cover rent payments from a homeless prevention program in New Jersey (Holl et al., 2016). Out of the 4,300 households served in 1989, 69% avoided eviction and 31% received help with finding affordable housing. Information about the long-term avoidance of eviction or repayment of the loans was not provided (Holl et al., 2016). Yet, financial assistance is limited as a sustainable remedy for evictions, limited by the complex logistics of fund distribution, the intermittent availability of funding, conditional access to funding, including eligibility requirements, and application deadlines, among other complications, etc. (see Rios, 2021, May 5).

Mediation services:

Mediation offers an alternative to the courts for the resolution of housing disputes. Mediation is a voluntary, discussion-based dispute resolution process, assisted by a trained, neutral third party – the mediator – in which party disputants are the decision-makers (Bieretz et al., 2020; Ebel, 1979). The mediation of landlord-tenant disputes typically involves party discussion of concerns related to the rental housing situation and the examination of alternative ways to achieve a mutually acceptable resolution of their concerns (Bieretz et al., 2020; Ebel, 1979). Unfettered by the protocols and delays of the judicial system, mediation offers flexibility about the problems to be addressed as well as the solutions for the problems (McGillis, 1979, January). Accordingly, problems that elude the attention of the judicial system – such as relationship and communication

difficulties between tenant and landlord which underlie the housing dispute or complaints about housing conditions that may be viewed as undeserving of legal attention – can be addressed through mediation. Parties may jointly devise solutions that suit their needs (McGillis, 1979, January). Thus, parties may gain time for repairs to be made, to obtain financial resources, to find substitute housing. Eviction costs and the stigma of eviction may be avoided through a deal to lower rental debt in exchange for vacating the premises (Bieretz et al., 2020; Ebel, 1979). Moreover, if mediation is provided before eviction disputes reach the court, court eviction record records and their potentially deleterious effect on tenants’ subsequent efforts to obtain housing can be avoided.

Statutorily mandated pre-filing mediation has been proposed not only to obtain these mediation advantages but also to increase participation in mediation and thereby increase access to these advantages. As one supporter observed, “according to the research on mediations in Housing Courts, court pressure on litigants to engage in mediation results in significantly more agreements...,” thereby reducing court evictions (Tokarz et al., 2020, p. 266). Concern that mandating mediation may undermine the voluntariness of mediation participation (Bieretz et al., 2020, April) may be alleviated in part by including the opportunity for parties to opt out of mediation and by evidence that parties generally report no pressure (Eisenkraft, 2019, June). In any event, the potential value of housing mediation to avert homelessness led Massachusetts set up a housing mediation program (the Housing Mediation Program) with voluntary party participation as part of its eviction diversion initiative in response to the threat to housing stability posed by the pandemic (Housing and Community Development, 2021, April 14).

The focus of mediation on attaining mutuality of dispute settlement— an objective extraneous to legal proceedings – remains a priority even in the mediation of eviction disputes: “Because eviction is so rampant, and its effects so acute, there is an understandable pull towards the tenant, but for the mediation program to be appropriate, one needs to be aware of the legitimate rights of the landlord as well” (Ebner & Press, 2020, pp. 117-118). Thus, the Housing Mediation Program in the Massachusetts Eviction Diversion Initiative promotes benefits that tenants and landlords can get by mediating. Tenants can be helped to “work out if arrears can be paid off and how and allow [the tenant] to stabilize [the] tenancy [and] work out other issues related to [the] tenancy,” and landlords may be helped to “resolve a case of rent arrears more quickly and reduce costs associated with an eviction” (Housing Community & Development, 2021, April 14).

Published evidence of the effectiveness of mediation in reducing evictions consists mostly of publicly available observational data from a few programs. Thus, a New Jersey program which provided mediation services to judge-referred tenancy cases reported close to a 90% settlement rate with 69% compliance though no details were supplied about the substance of the settlements (Holl et al., 2016). A 50% agreement rate in mediated eviction cases that averted 46 evictions was achieved by a Connecticut program that offered loans and mediation services to renters facing eviction for rent arrears (Holl et al., 2016). As of January 2021, mediation of eviction cases conducted through a Philadelphia eviction diversion program led to agreements in 92% of mediated cases that enabled nearly 70% of tenant defendants to remain in their home (Trescon et al., 2021). Evidence that mediation may be more advantageous to tenants than are court proceedings

was suggested by the 2018 mediation results of a St. Louis, MO mediation project. This project achieved case dismissal and no eviction record for tenants in 53% of its successfully mediated landlord-tenant cases compared to the 92% of cases that were won by landlords at trial, 40% of which resulted in evictions (Tokarz et al., 2020).

The power imbalance problem in mediation: Mediation has been criticized for its focus on process at the expense of substance and its consequent inattention to the legal rights of parties, a disregard that may deprive parties who are unaware of the legal protections available to them of the opportunity to claim their rights (Kurtzberg & Henikoff, 1997). This shortcoming is exacerbated in mediation when there is a power imbalance between parties. The principles of neutrality and self-determination which animate mediation require even-handedness and impartiality from mediators and respect for the autonomy of parties in decision-making – qualities that may hinder rectification of the power imbalance by the mediator. The power differential between parties is particularly relevant in landlord-tenant disputes, even those that arise in jurisdictions like Massachusetts that have laws to protect tenant rights (Kurtzberg & Henikoff, 1997).

Landlord-tenant disputes are often beset by a power imbalance between parties that tends to disadvantage tenants despite statutory renter protections (Kurtzberg & Henikoff, 1997). The power difference is particularly acute in eviction disputes. Tenants facing eviction tend to be lower-income, unaware of their housing rights, and lacking in legal representation. Landlords, by contrast, usually have greater financial resources, court experience, and access to expert assistance than do tenants. An example of the way this power differential plays out in court to the advantage of landlords is furnished by a year's worth of summary process cases in four Massachusetts District Courts (Kurtzberg & Henikoff, 1997, citing results from 1995). A large majority of 72% of renters in the cases failed to defend themselves against eviction by neglecting to complete an Answer detailing their defenses and counterclaims. Adjudication of summary process cases resulted in landlords regaining possession of the premises 97% of the time and avoiding liability for rent abatements in 96% of the cases in which counterclaims were raised or for repairs of sanitary code violations in 100% of cases. In effect, "while housing law is pro-tenant, its application often favors the landlord..." (Kurtzberg & Henikoff, 1997, p. 115), which also forms the context for housing mediation. From the perspective of one mediator-researcher, the history of housing mediation "has been problematic owing primarily to the power imbalance created by housing laws. As a result, mediation didn't have much to offer—the landlords held all the cards" (Ebner & Press, 2020, p. 94).

The need to redress the power imbalance between landlord and tenant is critical for effectively mediating landlord-tenant disputes, particularly those involving eviction. By interfering with the social dynamics between landlord and tenant parties during mediation, the power differential between parties diminishes the effectiveness of mediation in helping to end the deleterious consequences of evictions: "... the power imbalance between landlords and tenants creates obstacles to full participation in mediation. Mediation will only perpetuate the social ills of eviction if it cannot overcome this power imbalance" (Hare, 2020, January, p. 137).

Strategies for controlling a party's dominance during mediation are part of the trained mediator's skill set (Kurtzberg & Henikoff, 1997). Besides choosing a more neutral

setting for the mediation session, the mediator ensures that each party gets to speak and be heard, interrupts intimidation tactics, checks that decisions are made freely without coercion or threat, promotes the exchange of information, arranges caucuses with parties, and ultimately breaks off mediation when the power imbalance outstrips the mediator's ability to manage it (Hare, 2020, January; Kurtzberg & Henikoff, 1997). A power differential that arises from discrepancies in parties' level of relevant knowledge calls on the mediator to exercise an additional strategy, one that addresses party's need for access to information, such as information about legal matters, required for informed consent. In the case of eviction disputes, "when done properly, mediation can adequately address power imbalances in most cases by making sure that parties are *aware* of their rights and are therefore able to make informed choices about if, when, and how to assert them" (Kurtzberg & Henikoff, 1997, p. 24). In practice, though, the "proper" way to assure party awareness of legal matters in mediation is uncertain and beset by controversy.

Addressing the power imbalance in mediation caused by disparity in parties' legal knowledge: Two options for conveying information about legal matters arise in the context of mediation – providing legal information and providing legal advice (Kurtzberg & Henikoff, 1997). Dispensing legal information could involve, for example, mentioning that laws applicable to the dispute exist. Offering legal advice, on the other hand, would encompass interpreting the laws and explaining their application to the dispute. "Although on a theoretical level these two concepts may be distinguishable, in practice the line between them is very gray" (Kurtzberg & Henikoff, 1997, p. 83). Mediation programs differ in the way information about legal matters is shared by the mediator with parties in landlord-tenant disputes. Researchers Kurtzberg and Henikoff examined the reported mediated outcomes from Massachusetts mediation programs, which illustrated the different approaches to dealing with legal issues in landlord-tenant mediation. Their examples of programs that offered some form of legal information did not include programs, if any exist, that dispensed legal advice in the mediation of landlord-tenant disputes or summary process cases (Kurtzberg & Henikoff, 1997).

The policy at programs like a Cambridge-based program which provided facilitative mediation services was to suggest that parties consult with legal experts should a legal issue arise during mediation and otherwise eschew dealing with legal matters. The recently established Massachusetts Housing Mediation Program has followed suit, informing the public that its "mediators do not provide legal advice or tell people what to do but they can refer people for additional advice or information if needed" (Housing and Community Development, 2021). The outcomes of mediation services from these programs were not reviewed by Kurtzberg and Henikoff.

Other mediation programs undertook to supply parties with written materials containing legal information – considered an authoritative legal resource or neutral manual – upon party request and with no added explanation from mediators. The outcomes of mediation of landlord-tenant cases by a Boston South Shore mediation program that adopted the neutral manual approach was roughly comparable to those of adjudicated cases in Hingham and Plymouth District Courts. Landlords were given possession of the premises in all the cases, whether adjudicated or settled through mediation. Rent abatements and repairs were not ordered by the court in any of the adjudicated cases, and landlords prevailed on the counterclaims that were raised in 14.5% of the cases. In contrast, a small

minority (10.8% of 93 cases) of the mediated settlements generated by the program with a neutral manual option included some conditional concessions to tenants, namely, the return of premises to the tenant upon certain conditions or reductions in the amount of unpaid rent owed if housing conditions were problematic or if the tenant moved out. As for executions of evictions, they were more frequent (at 75%) in the adjudicated cases than in the mediated cases (at 52.7%). Overall, most mediated agreements produced by the program favored landlords and included terms providing for the tenant's departure from the premises (Kurtzberg & Henikoff, 1997).

Mediator descriptions of the procedural rules governing eviction were a feature of the array of services provided by a Northampton program to parties in landlord-tenant cases, which also included mediation of summary process or eviction cases, counseling for tenants at risk of eviction, the opportunity for both tenants and landlords to learn about legal rights before mediation in counseling, and assistance in finding housing for tenants facing homelessness (Kurtzberg & Henikoff, 1997). Adjudication of summary process cases in the Northampton District Court granted possession of premises to landlords in 97.7% of cases, found for landlords in 88.6% of the counterclaims raised by tenants in 21.2% of cases, and issued no orders for landlord repairs. Although possession was granted to landlords in 100% of the 64 cases settled through mediation, 41.2% of the settlements specified conditions under which the tenants could remain on the premise, unpaid rents were reduced in 23.5% of the agreements because of tenant's counterclaims or agreement to leave, and landlord repairs were stipulated in 9.8% of mediated agreements. Consequently, while the trend of mediation agreements advancing landlord interests was maintained, tenants were a bit better served by mediation from the Northampton program (Kurtzberg & Henikoff, 1997).

The perception of mediator neutrality may come under siege with the mere mention of housing law since so much of landlord-tenant law tends to provide protection for tenant rights. "An individual faced with unfavorable law may feel that the mediator has purposely introduced information which only helps the other side's arguments" (Kurtzberg & Henikoff, 1997, p. 83). Providing legal assistance and information independently of and prior to mediation has been proposed to circumvent the appearance of favoritism towards tenants. The effectiveness of such a maneuver is in doubt.

Support in favor of providing legal advice to tenants facing eviction prior to mediation was suggested by the account of a mediator practitioner-researcher, who cited the increased willingness of landlords to offer deals and negotiate with tenants as a result, in part, of the tenant's acquisition of legal advice from a Minnesota court project before proceeding to mediation with the landlord (Ebner & Press, 2020). Nevertheless, this anecdotal account regarding the effectiveness of pre-mediation legal instruction was not supported by findings from a randomized study that examined the impact of providing training (or information) about affirmative defenses to tenant parties participating in the mediation of Michigan eviction cases (Baird, 2004). The 103 eviction cases in the study involved tenant defendants who were largely low-income (68% with incomes of \$12,000 or less), minority (65% Black, 2.9% Hispanic, 32% White), female (79.6%), with children (79.6%), and who were facing eviction largely because of unpaid rent (99 cases) and infrequently on account of lease violations (4 cases). Tenants, all pro se, were randomly assigned to training in affirmative defenses prior to mediation (trained tenants

in 50 cases) or to mediation absent such training (untrained tenants in 53 cases). Landlords tended to be experienced in court procedures. The outcomes of mediation prefaced by training were compared to those of mediation without such training. The rates for eviction, dismissal, abatement, and adjournment (time for landlord repairs) that resulted from mediation with trained tenants were not meaningfully different from the rates for untrained mediating tenants. Moreover, third-party observations of the mediation sessions involving trained tenants as well as survey responses from these tenants indicated that most of the trained tenants failed to assert an affirmative defense during mediation. Further comparisons were drawn with the outcomes of directly appearing before a judge and of having legal representation.⁵ The resulting study data showed that tenants with legal representation fared best, achieving the lowest eviction rate and the highest rates for dismissals, abatements, and adjournments compared to the rates for the groups of mediating tenants and tenants who directly appeared before a judge (Baird, 2004).

Amalgamating services to optimize utilization of services from eviction intervention programs:

The complexity of the eviction problem coupled with the multiple needs of the renter population at risk of eviction may help explain why none of the reviewed short-term eviction interventions proved to be a panacea for the problem of eviction even though many demonstrated limited evidence of some efficacy in reducing evictions. In view of these factors, programs have been established that pursue a coordinated, multi-pronged approach to tackling eviction cases, namely by providing multiple services that have a track record of contributing to the resolution of eviction issues to some extent. A national scan of programs offering an array of eviction services – such as alternative dispute resolution, legal assistance, housing counseling, financial advice, financial assistance, housing advocacy – uncovered the existence of 47 programs that provided at least two types of services, usually alternative dispute resolution such as mediation, financial support, or legal assistance (Trescon et al., 2021, April). Interviews with personnel of these comprehensive programs highlighted the importance of a comprehensive approach to addressing renters’ needs – by, for example, providing financial counseling or social services, gaining the cooperation of landlords, offering financial assistance to resolve the immediate problem of rent arrears, and by centering “equity in program design and outreach” in response to the disproportionate presence of housing instability and eviction risk among communities of color (Trescon et al., 2021, April, p. 20). An integrated, holistic approach to providing different types of eviction prevention interventions under the umbrella of one program at a single site is considered to hold out the promise of “more organized and efficient services to at-risk renters” (Cohen & Noble, 2020, May, p. 6).

The difficulties of achieving success in handling eviction issues even with a multifaceted approach is illustrated by the experiences of a neighborhood-based eviction prevention program in Minnesota (Cohen & Noble, 2020, May). Modeled on an eviction prevention project in a Minnesota county Housing Court, which offered legal services, financial assistance, and mediation to tenants appearing in court to deal with eviction, the

⁵ It is unclear how tenants appearing before a judge and those with legal representation were selected.

neighborhood-based program offered a similar array of services but with changes in venue, timing, and population to be served. Services were available from the program in a non-court setting before evictions were filed to tenants potentially at risk of eviction or housing instability. The county court program reportedly succeeded in producing 18% fewer eviction judgments, 25% more expungements “and an increase in settlement rates” (Cohen & Noble, 2020, May, p. 6; Trescon et al., 2021). The case was otherwise for the neighborhood program. The convenience of contacting parties already present in court was lost in the switch to a non-court site and to a pre-filing approach, and shortfalls in the neighborhood program’s outreach to landlords along with competing time demands on tenants deterred party participation in mediation (Cohen & Noble, 2020, May).

Tackling the inequities of eviction:

The inequities inherent in the eviction system, manifested by eviction’s disparate impact on communities of color, women with children, and low-income people, present eviction intervention programs with a principled challenge. By limiting interventions to assistance for averting individual instances of eviction and disregarding the problem of the eviction, interventions like mediation get criticized for enabling an unjust system. Pointing to “the current ills of eviction stemming from deeply rooted systemic evils and injustices,” one practitioner-theorist critic worried “that mediation will be used as a band-aid, or a fig leaf, enabling courts and legislatures to *avoid* systemic change. If they can point to the use of mediation and say, “We are addressing the problem and managing the caseload, so we don’t need systemic change in eviction” then we [mediators] are propping up a system that should not be allowed to perpetuate” (Ebner & Press, 2020, p. 100). Doing away with the injustice of eviction requires the deliberate incorporation of the pursuit of equity into the eviction intervention program: “all parties involved in creating, managing, and supporting eviction prevention and diversion programs need to center equity in program design and outreach” (Trescon et al., 2021, p. 20).

Various initiatives that eviction intervention programs can undertake to uproot the inequities of the eviction system have been proposed. With respect to interventions that deal with individual instances of evictions, such as mediation, programs can detach their services from the eviction framework by assisting individuals before eviction is ever initiated (Ebner & Press, 2020). Additionally, the potential for eviction can be eliminated by ensuring that parties have convenient access to multiple services that address the full range of renter needs while respecting the rights of the landlord. The effectiveness of these initiatives would be evaluated in terms of their impact on the lives of the people receiving services and not just on program productivity (Ebner & Press, 2020).

Steps may be taken to make sure that the recipients of program services include those segments of the population disproportionately harmed by eviction. Mindful of the disproportionate representation of communities of color in evictions, initiatives were designed by various eviction prevention programs to provide information about available assistance with housing issues and evictions to those most at risk of housing instability (Trescon, et al., 2021). For example, a Florida program established working relationships with organizations directed by persons of color and respected by members of the community served, delivered information through door-to-door canvassing and at neighborhood social hubs, e.g., at barber shops. A Texas program publicized its services

on its website in five languages and sought out Spanish-language media coverage (Trescon, et al., 2021). An eviction prevention program, created by a Massachusetts legal aid organization, provides guidance in five languages on how to defend against a court eviction in a ‘self-guided online interview’ (Greater Boston Legal Services, 2021).

To promote changes in the root causes of eviction, programs are encouraged to add advocacy to their portfolio of activities – an addition that should be kept separate from services like those from mediators which require neutrality (Ebner & Press, 2020). Proposed systemic changes to be sought include expansion of the safety net, rent regulation, improved employment opportunities, adoption of the right to attorney representation for evictions, removing the stigma of eviction and eviction filings, greater access to consistent and stable financial resources, and reserving a portion of new residential construction for affordable housing (Benfer et al., 2020, August 7). If pursued, the extent to which the above actions and their ilk contribute to the undoing of eviction’s inequities would have to be methodically evaluated.

Appendix C: Evaluation Data and Analysis

The goal of the HMP is to prevent homelessness and to keep tenants stably housed and protect landlords from mortgage and tax delinquencies and foreclosures through the provision of mediation services by state-funded Community Mediation Centers in coordination with government-sponsored housing education and resource programs and with local courts.

This section provides an analysis of evaluation data gathered from surveys and interviews with participants who were party to a housing mediation session (i.e., tenants, landlords, and lawyers), housing program mediators and case coordinators, and MOPC and DHCD staff, as well as an analysis of referral forms to community mediation centers, screening and intake forms, and mediated agreements. The evaluation examined the achievement of this goal based on three research questions, which are as follows:

1. Is MOPC and its community mediation partners implementing a well-designed, “satisfactory” and sustainable Housing Mediation Program?
2. Is the Housing Mediation Program resolving landlord-tenant disputes in ways that is helping to preserve tenancy and/or generating alternative solutions or other benefits to landlords and/or tenants that is helping to ease pandemic-induced eviction/landlord-tenant disputes?
3. Does housing mediation help in preventing homelessness? Can a causal relationship be established between mediation and homelessness prevented?

The evaluation data gathered and analyzed is presented under four sections. The first three sections include data and analysis flowing from the three main questions indicated above followed by the presentation of data and analysis of other related themes. With respect to the three questions and the associated relevant data analysis under each of those sections, we explore the level of mediation party and sponsor satisfaction with the HMP, including the design and implementation of the program, mediator neutrality, mediator, and case coordinator roles, addressing power imbalances during mediation, etc., followed by data and analysis regarding the impact of the HMP on tenancy preservation and other benefits of the program. The third question and the related data and analysis present attempts to explore the causal link or at least the correlation, if any, between the HMP and the prevention of homelessness. A fourth evaluation question: *What are the cost benefits of mediation/increasing access and utilization of mediation/community mediation in landlord-tenant/housing mediation?* was not examined in this formative assessment and will be postponed until we have access to more economic data. Such an economic analysis could also be considered an assumed cost-benefit, cost of intervention or other suitable type of economic analysis.

1. Is MOPC and its community mediation partners implementing a well-designed, “satisfactory” and sustainable Housing Mediation Program?

a. Data on satisfaction from post-mediation surveys

According to **survey results from parties** (i.e., tenants, landlords, and lawyers) who participated in housing mediation under the HMP, respondents overwhelmingly approved

of the mediation services they received. The problems of the surveyed individuals were handled to the satisfaction of 93% of the 47 respondents. Ninety-eight percent indicated that the mediation process was fair to them. And 88% were satisfied with the outcome.

All but two of the respondents had positive things to say about either the mediation process or the mediators. The following sample of comments typify respondents' reactions to the mediators:

“[Mediator’s name] did a great job and kept us up to date and informed the entire process.”

“Mediator was great at understanding.”

“The mediator, [mediator’s name] was very helpful and accommodating. Her assistance exceeded my expectations.”

“[Mediator’s name] works hard to provide information about housing assistance and help to contact the housing assistance programs. [Mediator’s name] provide a bridge between the tenant and me during the case management. Her excellent work help solved the issue and to avoid the eviction judgement.”

“The mediators were very kind and understanding.”

Approval of the mediation process was widespread. For example,

“Overall very happy with the process, and also the mediators' knowledge of some of the resources that are available for tenants.”

“It was a very informative meeting moving forward on the payments during this pandemic.”

“Overall please with the process, mediator very helpful in bringing this matter to closure.”

“Today's mediation was very productive and when all was said and done we had an agreement that was satisfactory to both parties.”

“It helped with a better understanding of the hardship that’s been effecting us.”

“This is great service.”

One person was ready to recommend mediation to others:

“I have other summary process matters pending with the Court and will advise the clients to pursue mediation to resolve the dispute.”

A person who left mediation dissatisfied blamed the other party rather than the mediation process:

“It was an impossible mediation from the start. Both parties were very far apart from one another and the landlord was ultimately unwilling to make any steps forward. We had a much more pleasant experience than Housing Specialist conferences in court in the past, but there wasn't room for progress once we discovered that the landlord wouldn't make any repairs unless the arrears were fully covered.”

And two respondents were neutral, with one writing “N/a” and the second observing that he/she “Wasn't expecting it, it threw me off.”

Most of the 47 surveyed individuals were pleased with the assistance they received from mediators. Mediators' listening skills were acknowledged by an overwhelming majority of the respondents (91% of 43). Large majorities also appreciated mediators' help with identifying and clarifying issues (83%), enabling parties to voice concerns and make their own decisions (83%), and with generating ideas and options (70%). Smaller majorities recognized that mediators assisted with generating new information and helped parties be open to alternative solutions (51% and 60%, respectively). Parties expressly praised mediators for such things as their ability to encourage productive discussion: “Help facilitate good dialogue” and “They were able to move the process along as efficiently as possible”; for their patience and tact: “They had a lot of patience and tact to resolve issues”; and for their listening skills: they “validated and summarized concerns in a way that communicated understanding.”

b. Data on satisfaction from party interviews (i.e., tenants, landlords & lawyers)

Party interviews were conducted with tenants, landlords and lawyers who had participated in housing mediation and had indicated on the post-mediation survey that they would be willing to share their experiences with housing mediation with an evaluator. Given that survey respondents overwhelmingly approved of the mediation services they received, the responses from the interview participants were also mostly positive. The interviews provided an opportunity for participants to expound upon their responses on the survey.

Lawyers, whether they represented landlords or tenants, communicated the value of having the option to mediate housing disputes. One lawyer who only represents landlords appreciated how mediators can manage the interpersonal dynamics between the parties and provide a structured environment for the parties to resolve their dispute:

“[I was satisfied] with the quality of the mediation, of the mediator, and of the ability for the mediator to, you know, try to speak to the tenant. I only represent landlords. Tenants tend to get very emotional, very defensive, and I thought the mediator did an excellent job trying to separate the emotion from the eviction. And he did an excellent job.”

To the same point, another lawyer, reflecting on a case that did not result in tenancy preservation, but in a soft landing—that is, the tenants obtain the means with which to move out and into other housing that suits their needs and meets their interests—found the mediation to be “helpful to resolve it [i.e., the dispute] amicably...not to say that I don't think it wouldn't have been resolved without mediation, but I think that it was probably a good way to resolve it.” And another lawyer lauded the mediators' ability to help move parties closer to an agreement: “A good mediator, you know, is able to, you know, get the sides a little closer.”

Another lawyer who also represents landlords expressed a strong preference for mediation over going to trial because mediation often serves the landlords' desired outcomes better. Going before a judge feels like “losing control over” achieving the client's desired goals:

“With most landlord-tenant cases, we're much better off if we can mediate a resolution than taking it to trial... So, I think the landlord is going to have more control and a better idea of the outcome if you can make some sort of a deal. Sometimes the deal is: the tenant can stay, but they got to pay the arrears. And now we have an agreement that says this much has to be paid on this day each and every month. But then when the tenant misses the payment plan, you can go back into court and actually get him kicked out. But once you open it up to a trial in front of the judge and all the facts, you're tossing the dice.”

A lawyer with experience representing low-income tenants, has found mediation to be an effective early intervention conflict resolution tool to resolve landlord-tenant disputes before they escalate:

“I do think that mediation is really, especially like an early mediation can help resolve a case and avoid the escalation to full blown litigation. And I try to do that with some of my cases, especially when I look at it and say, ‘look, this is going to cost both sides a lot of money and nobody's going to come out happy at the end except for the lawyers. This is a case that should get resolved. Let's mediate it right now and see if we can resolve it without wasting everybody's time and money.’ And I've found that I've been able to do that in a number of cases.”

Lawyers were also impressed by the mediators' commitment to neutrality. Frustrated by what one lawyer perceived to be stalling tactics by some tenants, such as refusing to pay rent for as long as the moratorium on evictions was in place, the lawyer felt that the mediators “know that they're playing those cards, and that's why it was very enjoyable to, you know, to settle the first case with the mediator.” According to the lawyer, the mediators remained neutral about how they assisted both parties to understand their respective rights and responsibilities as they related to the housing dispute. One lawyer, however, expressed frustration with mediators for communicating to tenants their legal rights: “They drive me nuts because they always tell the tenant, ‘You know you have the right to file a CDC affidavit.’ It drives me nuts because that kicks in the moratorium that says I can't get my execution until the end of July...and sometimes they're telling them,

‘You know, you can apply for the free lawyer program and go consult with somebody if you need to.’”

Landlords valued receiving housing mediation services to resolve their disputes. The following sample of comments made by landlords during the interviews exemplify their reactions to mediation:

“They [i.e., the mediators] gave me a much better understanding that, you know, that there is, there was some type of hope.....During the pandemic, you know, just going through the channels of emotions, of dealing with financial burdens, not just for me, for my tenant as well, and just knowing that, you know, he was able to get some help, anything that would help, you know, keep up, keep me from losing my property, kind of helped out a lot, so my experience with it in the mediation, it went over pretty well.”

“Yeah, so [the mediator] was the primary person I dealt with there, but they did a good job. So, you know, they were on top of their game, and they worked hard at it and so definitely made the process easier. Generally, the mediations are good. My experience has been, I've been in a number of them over the years. It's good. Especially, you know, sometimes you have a tenant that is emotional, and they don't necessarily, they may not give a lot of credibility to the landlord, you know. Even if I try and be direct and honest with tenants and explain to them what their rights and their obligations are to expedite the process, but sometimes they're less, you know, open to hearing that from the landlord as opposed to a third party that's there that is disinterested, you know.”

One landlord articulated that they were satisfied with the mediation process, but not with the outcome: “I was satisfied with—let me say I was satisfied with one part, not satisfied with the other part.” According to the landlord, the agreement reached was “vague” because it did not include a specific payment plan, something the tenant was unable to commit to because of their current financial situation.

Another landlord interviewed had responded to the post-mediation survey being satisfied with the mediation services but voiced strong dissatisfaction during the interview. The landlord communicated feeling disrespected by the lawyer representing the tenant.

Tenants overwhelmingly appreciated receiving housing mediation services. The following sample of comments made by tenants during the interviews exemplify their positive reactions to mediation:

“I'm very happy that I get mediation support,” the tenant reports. “So still, like, I have problems because I didn't pay that money back, but it is a good thing that they help me to talk to the landlord nicely before she take me to court or before she take another action. So, yeah, I'm very happy that they helped me out with communication with the landlord.”

“...it [i.e., mediation] was pretty pleasant, you know, and it was pretty smooth and the workers that work for the organization they were very nice and explained things, you know, clear and well and they were totally, you know, unbiased, you know, and if anything that was said was not the correct thing to say they had to explain. ...They were wonderful people, you know, it's a very well needed and great program, you know, that's actually, you know, there to assist the people like the tenants and landlords that need it. ...With the RAFT and with the combination of RAFT referring me to [mediation]...so yes, I mean with their help, with the two offices working together, you know, it really is, you know a great combination. It's a very good team, you know the both of them.”

“I can't remember the names of the mediators, but he [i.e., one of the mediators] was phenomenal. That fact that he ... assist[ed] in this process of eviction and relocation during a pandemic...was a blessing in disguise. To have that safe space in the mediation process, very powerful, very powerful. And I felt that they created a space where both parties felt heard, they felt seen... [In the breakout sessions] the mediators reiterated what was said to make sure that what we said was what we meant so that it landed properly, so that they received it to be able to bring it to the opposing party. And it was just a really powerful experience for me, personally and professionally. And I really think that if we could expand that across the nation, I think that we could work something new, because I think a lot of the people in this nation do not feel heard... They [i.e., the mediators] understood the law. They understood the limitations... They gave us a timeline on when to expect the documentation, where we needed to sign, how we needed to sign, what we needed to do. They gave us plenty of notice ahead of time as to when the court dates were going to be, when the mediation dates were going to be, how to handle the process. We had all the details to connect, assumed that that were necessary. If there's any complaint or any concern that I did have, I don't even think that it was [with the] mediation [center].”

One tenant who was contacted changed their mind about participating in an interview, saying before they ended the call that the dispute had yet to be resolved and so they were no longer satisfied with the mediation process, even though they had indicated that they were satisfied with the mediation services on the post-mediation survey.

c. Data on satisfaction from FY21 HMP debriefing with DHCD

The Department of Housing and Community Development (DHCD) expressed satisfaction with the HMP for aiding in the preservation of tenancy: “The outcomes of the matters that have been mediated appear to have strongly supported the program goals of stabilizing tenancies.”

DHCD also communicated that District Courts that make referrals to CMCs for housing mediation have been similarly satisfied with the HMP:

“And the District Courts that have made referrals have expressed great satisfaction with the program and clearly seem interested in continuing to refer

matters to mediation. They see it as a real positive. And at least for the time being, the courts are going to keep the tier one/tier two structure which provides an ongoing opportunity for mediation in District Court cases.”

DHCD, however, acknowledges that the number of referrals to housing mediation vary from center to center across the state, which has made it challenging to meet originally intended referral goals. DHCD has adopted a learning posture in relation to the low numbers of referrals, signaling its understanding of the multiple reasons that referrals numbers have been so low (e.g., financial assistance programs obviating the need for mediation, variation in relationships between CMCs and District Courts, lack of partnerships with the Housing Court, etc.) and its interest in investigating effective outreach strategies, especially those targeting underserved communities.

d. Reflections from mediators and case coordinators on the design and sustainability of the HMP

Interviews with mediators who mediate housing cases--whether they had previous experience mediating housing cases prior to EDI or not--paint a comprehensive picture of how they provide quality mediation services to parties to resolve disputes and contribute to preserving tenancy and increasing housing stability.

Mindful of the high level of stress parties facing eviction may be under and the high tensions that may exist between landlords and tenants, mediators discussed how they employ their skills in reframing and addressing emotions during mediation:

“And we do use those good skills of mediators, of reframing. So, when they start doing these personal attacks to each other about, well, he didn't do this and he didn't do that, we stop and say, can we reframe so that we try to neutralize. So, they have this emotive language that comes out. And I know that just does it as well. We try to get them to get those emotional language away. It's OK to be emotional, but we try to neutralize it through reframing.”

Given the unprecedented nature of the global pandemic and the havoc it has wreaked on people's livelihoods, mediators also work with parties to reframe their dispute from a personal one to one that is part of a larger, systemic issue:

“And we try to as mediator, I don't know. I try to get them to look at this as not they're bad people because they're not paying rent, but it's a bad situation. We're all in a bad situation and we know that what we're here to do here is to try to find some common ground so that you can continue the relationship somehow and they go get some and get the raft money they start paying. Things are starting to get a little easier. I think what the process does is it gets the parties, as I said, realizing that it's not personal, that it's a systemic problem for everybody, that someone I didn't use this phrase, but someone else did. We're not all in the same boat, but we're all in the same storm. So it's had an impact on everybody. And when you get them to focus not on the personal, but you focus on the situation, people are much more apt to get involved in solutions.”

Mediators also inform parties about resources available to them for alleviating the financial problems caused by COVID:

“I would say that primarily it is covid related, people haven't worked for months and landlords are really in serious trouble. So I think one of the things that we do as mediators, we don't advise, obviously, but we do point out certain things they can look to. For example, we talk about RAFT, we talk about resources that they can go to for some help, and we serve to get them to talk to each other and realize that they're both in financial trouble. The landlord needs to get rent so they can continue to pay their mortgages. And the tenants, sometimes they've had a relationship for a year or two years sometimes, and they're just in a bad way.”

Mediators communicated that the most common types of housing disputes they mediate involve the tenant(s) owing back rent and the landlord willingness to preserve tenancy on the condition that some or all the back rent is paid. To assist parties in reaching an agreement, mediators discussed engaging in reality-testing with parties and meeting with tenants prior to or during the mediation to work out a budget:

“Our most common situation is a tenant is behind on rent and the landlord wants to keep the tenant and the tenant wants to stay there for the time being. And I think we try to do like informal budgets with folks to see if it is realistic. Does it make sense to stay in this apartment? And once that's determined, I think a lot of the times people see the number that's owed and they just run away from it. Right. If I owe ten thousand dollars, I don't even know how to start chipping away at it. And so we really can work with tenants and landlords to break it down. And a lot of the times it's like, OK, maybe weekly payments work for you. I'm going to take two hundred dollars out of every check and I'm going to put it towards my rent and I'm going to give one hundred dollars extra month because that's within my budget or something like that. And so I think sometimes even just getting people to the table when it has been avoided for. So this is an interesting time where you have a year's worth of rent. And so I think in that instance, although agreements may look like simple payment plans, it's really like just getting everyone back on track, building up the trust with the landlord and the tenant again. And so I think that in my experience is helping them break it down. Setting up a schedule is so big in preserving their tenancy.”

In cases where parties may not be able or interested in preserving tenancy, mediators assist parties with creative problem-solving to create a soft-landing for the tenant. In these cases, mediators discussed helping parties to achieve housing stability as overriding their concern for preserving tenancy.

In addition to the individual skills of the mediators, having Community Mediation Centers located throughout the Commonwealth staffed with a team of trained, experienced mediators contributed to the design of the Housing Mediation Program as a critical component of the Eviction Diversion Initiative. Furthermore, the infrastructure

and networks are in place for CMCs to continue providing housing mediation apart from the EDI.

Avoiding 'mission creep'

The trained and accomplished mediators at the Community Mediation Centers appear to have varying degrees of experience with housing mediation in particular, with some having mediated housing disputes prior to the HMP while others had not. Thus, some Community Mediation Centers were offering mediation services prior to the HMP and had established relationships with housing authorities whereas other Community Mediation Centers primarily offered small-claims mediation services before expanding their services to include housing mediation. Regardless of their level of prior experience with housing mediation, mediators reported applying the same foundational mediation skills to housing disputes and characterized the additional training offered by MOPC under the HMP as very useful.

All the interviewed mediators were cognizant of the power imbalance that exists between tenants and landlords and voiced significant appreciation for the role of the case coordinator in referring parties to housing and legal counseling and rental assistance programs. The division of tasks between case coordinators and mediators has helped both to provide wraparound services to clients and to buffer mediators from any perceptions that they may be compromising their neutrality. Apart from the aforementioned objection by one lawyer, representing a landlord in a housing mediation session, to information offered by the mediator about free legal aid clinics and CDC affidavit filing (see page 56), there was no other clear evidence that mediators experienced mission creep or overstepped their facilitative role as mediator to advocate for the rights or advance the interests of one party over the other. One mediator's self-assessment of their role in the HMP exemplifies how mediators exhibit restraint even in cases where they may notice an issue that may invite them to intervene in a way that benefits one party over the other:

“First of all, having a legal background sometimes is a disadvantage because they'll say things during the mediation and you're going to say to yourself, 'Well, this is a defective notice to quit or they haven't certain things.' So, if you have a legal background, it can be actually a disadvantage as a mediator in one respect, because the parties could come to a decision that would really be suitable. So, I had one case where that occurred and there was some legal issues and I saw some defects in the notice to quit that came up during the mediation process and...if...as a neutral, I can't point that out, right, because I'm taking a side, but I see that as an issue. But then at the other end, then you say, 'Wait a second now, if I point out this legal issue, I'm going to be taken aside and we may not reach an agreement, and when I say 'we,' the 'parties' may not agree that it is going to be an advantage. So even if the law may not be, that may benefit the tenant, the resolution might not be really useful anyway, because how do I describe it? If you don't have a good relationship with the landlord-tenant, if they have not a good relationship, and when you start to point out these things, it actually exacerbates the situation.”

A complication in the approach of preserving mediator neutrality by having the case coordinator work with parties to identify legal resources was brought to light when one mediator disclosed that they also work with clients in their capacity as a case coordinator. This mediator/case coordinator reflects on their efforts to maintain neutrality by passing cases along to other mediators or directly informing both parties at mediation that they had worked with both in their capacity as case coordinator and information resource:

“So, I try to maintain my neutrality if I need to mediate a case. If I can pass it to somebody else to mediate, I will pass it to them if they're comfortable mediating the case. But if I am also the mediator, I will tell them like, ‘I worked with both of you guys. I already talked with both of you guys. Are you going to be okay with me doing this?’ And they go, ‘We want you.’ I actually have a couple of other cases that other mediators were mediating, and I was the tech person in the background with my [screen] blacked out. The parties were shouting, ‘Go ask [name redacted, research participant]. Where is [name redacted, research participant]? We heard this, this, this needs to be done,’ and then, ‘Can you clarify with [research participant]?’ Eventually, I'm like, ‘Okay.’ I have to come from behind the curtain and say, ‘You're right. The application is this way.’”

This HMP staff person who serves as both mediator and case coordinator does not see a conflict of interest, but rather a strength in playing both roles, though not simultaneously, as they are able to build trust and rapport with both parties:

“I don't see the two roles conflict. I feel like merging them and being mindful of my neutrality and not to give advice to one party at the detriment of the other party. I feel like if I can maintain that and be mindful every phone call I'm making and it's to their common goals, I feel like I'm actually more efficient in that sense. I can see both sides in arguments. I do understand the other side in the arguments. It's like, ‘You're not going to be impartial.’ ‘Well, isn't that up to the party to see whether I'm impartial or not?’ That's how I look at it. If they call me out and say, ‘You're not impartial,’ I go, ‘Okay, then I'm not going to do this. Let somebody else do it.’ But if I have all the wealth of experience and the information they need working with all of these multilayer agencies and bureaucracies, why not use my information and knowledge I already have to help this flow down the river a little faster, sort of? That's just my perspective.”

This mediator appears to represent an outlier as all other research participants interviewed drew a clear distinction between the role of the mediator and the case coordinator. However, this approach does not appear to be problematic or evidence of a violation of the principle of neutrality. Rather this approach arguably complements the outsider-neutral model with the insider-partial mediator model where the mediator is known by the community served and enjoys considerable trust and credibility (Wehr & Lederach 1991) while also being transparent with parties and maintaining neutrality when mediating.

The role of the case coordinator supporting the HMP

Another critical way in which MOPC and its community mediation partners are implementing a well-designed, satisfactory, and sustainable Housing Mediation Program has been in strengthening existing partnerships between CMCs and other EDI-affiliated agencies (e.g., HCECs, RAAs, District Courts, legal aid clinics) and creating new partnerships as needed in order to increase referrals to mediation and to resources for both tenants and landlords. Creating partnerships requires considerable time and effort, a role that has been mainly played by the HMP case coordinator.

The importance of the role played by the case coordinator in supporting mediators and parties—both tenants and landlords—prior to, during, and after mediation was a recurring theme that emerged in interviews with mediators affiliated with various CMCs across the state. The case coordinator’s role serves the HMP on two levels: supporting the *internal structure* of CMCs by receiving referrals to mediation, conducting intakes, screening clients, making referrals to services, and, in some cases, providing direct case management services to parties, while also working with *external partners* to strengthen collaboration between the various EDI-affiliated organizations that together aim to support landlords and tenants in preserving tenancy during a global pandemic.

The role of the case coordinator prior to mediation

Reflecting on the indispensable role of the case coordinator for the HMP, a CMC director reasoned that had the CMC received as high a volume of referrals to housing mediation before the pandemic as they do now under the EDI, then “we probably would have had to dedicate somebody [to that role].” The case coordinator working at this CMC now “became expert in all of the programs and [in] all the training that was offered for that,” continued the director. Regardless of the volume of referrals received by the respective CMCs, mediators across all the CMCs recognized and valued the amount of work the case coordinators do, from receiving referrals; conducting intakes; screening clients; referring parties to other services—namely, rental assistance agencies, housing counseling, and legal aid clinics—conducting outreach to HCECs, housing authorities, and courts; to providing direct case management services to parties, in some cases.

Case coordinators shouldering the burden of case coordination has allowed the mediators to focus on mediation: “[The case coordinator] really makes our job so much easier. We just show up and we start getting into the mediation process and they’re already into that mindset.” Early in the implementation of the HMP, some mediators expressed how challenging it was initially to balance their commitment to the principle of neutrality in mediation while also trying to make known to parties, especially tenants, the legal and financial resources available to them without appearing biased to the other party:

“...a part of our role is to remain neutral and to provide them with that information sometimes feels like a little bit like we might be favoring one side. And at the beginning, it was a little treacherous kind of navigating that because we’re trying to provide information to both parties, both to the tenant and landlord...”

By providing parties with relevant information and referring them to appropriate services prior to scheduling mediation, the case coordinators play an important coordination role while also helping to support the high-level quality of housing mediation services offered by the mediators. As one mediator explained:

“...what got implemented right away is having [a case coordinator] prescreen a case and be able to tell [the parties], to provide them that information before they even get to mediation. So, finding out if this would be something that before they get to mediation that they need to explore or need to become more aware of their rights and all of the benefits and all the assistance that they could be accessing, having that laid out for them before mediation definitely helped the process because they were more aware and then at that point in time, we weren't compromising our neutrality and we also were able to have more actionable decisions from them right off the bat.”

By providing parties with information and referrals to financial assistance programs and counseling upfront, the case coordinator not only supports the work of the mediators, but also equips the parties with the resources and knowledge to prepare them to pursue their interests, uphold their rights, and negotiate with the other party when they participate in housing mediation. The case coordinator, according to one mediator:

“...is not bound by the same things in terms of mediation. They are well-trained and they know about the different programs that could be useful to the landlord or the tenant. They can point them in that direction and ask them to do that prior to scheduling the mediation. So, they come to mediation with all the tools they need and all the support they can get from different programs or the financial [assistance] or whatever kind of program—that is just going to make the program work a lot better.”

Mediators from another CMC reported that in every housing case they mediated they found the parties to be well-informed about their legal rights and responsibilities precisely because they had already accessed services from an HCEC prior to mediation.

Mediators also highlighted the critical role that the case coordinator plays not only in explaining what mediation is to the parties, but also building trust among the parties during the process of mediation. As one mediator explained:

“...[the case coordinator] really makes our job so much easier. We just show up and we start getting into the mediation process and they're already into that mindset. [The case coordinator] creates that positive mindset. And the parties are ready to work together because that's the critical part of it. Number one: trust. So, if you've got someone that starts the trust process before you even get to talking to the parties, and when you have the parties already genuinely interested in working together to find a solution, it really makes our job so much easier.”

To this point, another mediator added:

“...the case coordinator...I don’t know what’s going on without checking in with him. And he as a really, he does a really nice job of connecting with parties and so that they trust us, the process, so that it’s easy in the mediation.”

And still another mediator echoes the importance of the case coordinator in building trust with parties:

“Like [name redacted] has relationship with every Portuguese, Spanish person. They will text him, any odd hours, and he will reply. If he doesn't know, he'll text me [in?] any odd hours and say, "What should I tell [inaudible]?" This and this. And I tell him, "It's submitted, and it has to wait. Don't escalate, make things worse, basically. Hang up, we'll figure it out." Stuff like that. So yeah, I feel like the relationship is the key for-- I'm coming in as a mediator, but I didn't understand. [inaudible] slowly metamorphosis into a relationship person, more or less.”

A mediator reported conducting between five to six housing mediations in court within an hour pre-COVID—“not ideal,” in the words of the mediator. While helpful, the short amount of time available to mediate was not sufficient to address the many complicated issues that might emerge. During COVID, the same mediator reflected, “just having [a case coordinator] do an intake with folks is so important” because it slows the process down, allowing for information-gathering and trust-building with parties, especially with tenants who may not otherwise feel empowered to voice their interests and concerns.

The role of the case coordinator during mediation

According to interviewed mediators, the case coordinator also plays a supportive role for mediators and parties during mediation—in some cases, even by being present during the mediation.

One mediator recounted a case in which the case coordinator and mediators assessed the urgency of the situation: the landlord was moving forward with filing a summary process complaint, a court date was set, and the tenant had yet to apply for RAFT assistance. The case coordinator, informed about the RAFT application process, knew it would take between four to eight weeks to apply and receive a response. The tenant was having challenges with filling out the application materials, and the case coordinator worked directly with the tenant to file the application. Knowledgeable about the timeline, the mediators were able to communicate to both parties the status of the RAFT application and help the parties agree to continue working together to receive the financial assistance and put a pause on the eviction.

In another case, the landlord showed up to mediation with a lawyer while the tenant was without legal counsel. The tenant was also struggling with substance abuse. The mediators, working with the case coordinator, informed the tenant about RAFT during the mediation, and the case coordinator provided the tenant with the additional support needed to access the applicatin.

A mediator at another center described how the case coordinators, in some cases, are present in mediation, especially when the landlord has legal representation and the tenant does not. At one center, “different case coordinators are able to help out in the mediation and support folks, especially if a landlord is represented and a tenant is not. They’re still neutral, but they’re actually, they know the information and they can say to a tenant, ‘you know,’ where we can’t, ‘like this may disadvantage you or this may help you.’” This statement raises questions about the expanding role of the case coordinator at some centers to serve as a source of information for parties.

The role of the case coordinator post-mediation

After mediation, the case coordinator may continue to assist the parties, although this does not appear to be the case at every CMC. At one CMC, the case coordinator sent a follow-up email to all parties who had participated in housing mediation to inform them that they could potentially be eligible to apply for additional financial assistance. Continuing to inform parties of updates to new programs and forms of assistance may be an added responsibility for case coordinators that could be explored further. One director of a CMC believed HCECs do not proactively reach out to individuals, especially regarding follow-up about potential additional assistance because the HCECs are inundated by requests for assistance. The director at this CMC was grappling with what the case coordinator’s responsibility should be in doing follow-up work. Additionally, the director recounted a case in which a former client contacted the case coordinator, not for mediation services, but for emergency case management services, an example which highlights how the case coordinator’s work is directly beneficial to parties:

“...we do a lot of stuff beyond just mediation, right? We have people, we've had a number of, we don't offer it, but when it becomes apparent that parties are unable to access programs themselves, we extend ourselves and we are often the [phone] number they have that [has someone who] answers the phone, so. Like the [case] I told you about yesterday where [the tenant] says, ‘I'm standing here with my eight year old homeless and I can't move into the apartment because RAFT,’ well, it turned out she changed her telephone number and she said she told them. They didn't have it. We told them she changed her telephone, a month got lost in the process. Having the coordinator meant that she answered the phone. She's a familiar voice to the person. The person remembered her. She remembered the case. But then in the middle of it, she decided, you know what, I think I need to talk to [the CMC director] about this. And then she came to me. That could have ended up being a message that got left on our phone that we didn't handle until a day later. So, having [the case coordinator] there was great, at that time. And I think her intake is very complete and she knows what to listen for. So, yeah, it's great. We're really happy. It's very helpful.”

All case interviewed coordinators saw their role as supporting the HMP and were engaged in activities consistent with their job description: conducting intakes, processing cases, contacting parties to determine availability for mediation, scheduling mediations, conducting outreach to raise awareness about mediation and encourage utilization of mediation services, and recording data. At some CMCs, the case coordinator shares

tasks/responsibilities related to their role with co-workers (e.g. part-time staff and/or mediators assisting with scheduling, intakes, etc.) while at other CMCs the case coordinator is the sole person fulfilling these job duties.

Interviewees communicated that they saw their role as case coordinator change and expand over the course of the HMP both because of external situations and the initiative taken by some case coordinators to expand their activities/responsibilities due to gaps in services provided by other agencies. One coordinator reported that in addition to their core responsibility for scheduling mediations, they have seen their role extend to finding resources for parties:

“I've definitely seen my work grow and change over the course. I have started as case coordinator, and it's definitely expanded more from the role of simply coordinating and scheduling mediations to a lot more resource gathering for parties, a lot more helping parties to find active resources. I do a lot with the RAFT program and helping parties to navigate that process and everything like that. And I think it's definitely become more supplementary to mediation rather than just simply scheduling mediations. Obviously, that's still a huge chunk of the work to it.”

Another case coordinator described their role and the ways it has expanded to include finding resources for parties as providing “wraparound services”:

“What I do is provide wraparound services. This is beyond the scope of my job, but it is reality of the role. If someone is struggling with eviction, there are reasons behind that: maybe relationship issues or domestic violence, and they are not getting supported. There are families who delayed relocation due to the pandemic and that exacerbates the abusive relationships. I refer parties to the appropriate services. I also refer parties to legal services as a way of providing those wraparound services and avoiding any conflict of interest with the mediation center.”

Under the EDI, CMC case workers work to strengthen existing partnerships and build new ones with EDI-affiliated agencies as well as with a wide variety of community-based organizations and institutions. By expanding their network of partners, CMCs attempt to raise awareness about housing mediation services and establish referral systems. Case coordinators also tap into their relationships within the EDI network to enhance wraparound services.

Case coordinators see their role as pivotal to the success of the HMP. According to one case coordinator's self-assessment, if there were no case coordinators serving the HMP, then “I think there would be a spike in evictions.”

In reflecting on their role as case coordinator, one case coordinator found that a formal mediation is not always necessary. By talking with parties, assessing the situation, informing them about resources, and updating them on the status of RAFT applications, the case coordinator can help the parties resolve the outstanding issue of rent arrears and

achieve tenancy preservation as an outcome, all without progressing to a formal mediation. In this way, the case coordinator supplements mediation by working with both parties to find resources and preserve tenancy:

“But I think what I've found as a case coordinator is that a formal mediation isn't always necessarily necessary. I think sometimes all it takes is myself having a conversation with a tenant, them giving me information, having the same conversation with the landlord on a separate phone call, and that generally resolves the situation sometimes. That alongside RAFT has been a lot of patchwork, kind of smaller mediations that aren't necessarily as large of a scale as we typically think of. So, yeah, in the whole I'd say definitely it's become very supplementary.”

The expansion of the case coordinator's role to include coordinating resources does not nullify the need for mediation in every case. By interfacing with the parties and conducting screenings, the case coordinator is also attuned to any other underlying issues that could be resolved by the parties with the help of a mediator. As one case coordinator clarified: “If the tenant has outstanding issues with unit conditions or things like that, then I'll obviously push a little bit harder for mediation.”

While the abundance of financial assistance at present has meant, to some extent, that mediation was not necessary, case coordinators have observed that in some cases landlords and/or tenants are hesitant, or initially unwilling, to access the financial resources available. The reasons for not wanting to apply for financial assistance vary from case to case. As one coordinator explained, individuals' attitudes about accepting public funds or about others accepting public funds are a factor. In other cases, landlords have been hesitant to move forward with applying for financial assistance because they are not convinced that their tenants will be able to pay rent in the future after the debt has been paid off. Case coordinators, then, take on the role of counseling parties about the benefits of financial assistance and helping parties to clarify their interests vis-à-vis financial assistance. One case coordinator recounted a case to illustrate the point:

“So I think one case that comes to mind, and a lot of these cases are actually stemming from the RAFT program with the limitations that we've found that program can have often with subsidized housing. I had one tenant who was not able to get all the rent covered via RAFT. And the landlord was interested sort of in making a payment plan, not as confident that the tenant would be able to make one. So rather than engaging in a formal mediation, I was able to pretty much say to the tenant, "Look, here are all the funding sources that are out there. It's more than just RAFT. Let's see if there are ways to utilize those other funding sources to get you some more funding, and that would therefore make a payment plan kind of obsolete." And I was able to do that with some help of some of the other resources that we have the luxury of having here at [the community mediation center], engage some kind of tenancy preservation resources as well. But I think that's one of the biggest examples I've had where a mediation could have been helpful, but I think it would have stalled the process longer than it needed to go because the result of that mediation would have been, "Okay, let's look at other

funding," or, "Let's come up with a payment plan that's just going to get broken," because the tenant had no income to be able to do that. And so stepping outside of what I considered my bounds at first as the case coordinator to help this tenant locate resources. "I spoke with the landlord to just kind of lay out the options. And there was definitely some hesitancy there that I picked up on and was able to just kind of ease that hesitancy, not to the point of needing a formal mediation but at least gathering that if we could figure out this funding dilemma he was willing to keep it [i.e., preserving tenancy] going, so."

Another case coordinator recounted a story about a landlord who refused to apply for funding because they wanted to "teach [the tenant] a lesson" and did not want tax-payers to "pay for him." The case coordinator had a conversation with the landlord and convinced the landlord that applying for funding to pay the outstanding \$20,000 debt served his interests better than evicting the tenant. These few examples highlight how case coordinators, in addition to referring parties to financial services, even assisting parties with the application process and gathering documents, are also helping parties to overcome any hesitations or relationship issues that prevent them from accessing financial assistance.

While the expansion of the case coordinator's role has translated into an important support for parties in need of assistance because of the strain of mounting debt and threat of eviction, it is important to note that case coordinators can experience burn-out from their work. Working directly with clients facing chronic housing instability and other crises can exact a toll on staff, and attention should be paid to ensuring that case coordinators receive the support they need as well as opportunities for self-care.

Case coordinators reported stepping up to fill gaps in services as evidence that additional supports may be needed at other agencies to improve the quality and efficiency of their services. As one case coordinator reflects:

"I think the fact that I'm so involved, I'd like to say that it speaks highly of my role and involvement, but, unfortunately, I think it's the opposite. I think it doesn't speak well about the involvement of the RAA within-- to the parties directly. There's not much communication between the RAA and the parties without me involved. If I wasn't involved in that, I think there would be far fewer RAFT applications than there already are being processed through."

DHCD also acknowledges that there has been "huge burnout at the RAAs and a lot of turnover." However, the situation may change when financial assistance diminishes considerably. If, as predicted, referrals to housing mediation increase when financial assistance decreases, then case coordinators may find themselves doing less resource coordination and more case coordination. On the other hand, given the gaps in TPP services and the likelihood that financial assistance programs may soon decrease significantly, it is possible that case coordinators will find themselves dedicating time to identifying other sources of financial help, especially from charities and other private sources. Additionally, it remains to be seen if the outreach efforts by case coordinators

will result in increased referrals when financial assistance, like ERAP (the Emergency Rental Assistance Program), subsidize.

Case coordinators report noticing gaps in services available to landlords and tenants and have taken steps to fill those gaps, changing their anticipated role as HMP case coordinator. Across the CMCs, case coordinators are (1) helping with filling out forms/documentation; (2) and following up with agencies on parties' behalf; (3) assisting with translation/interpretation; and (4) helping parties to address their unfamiliarity with bureaucratic systems, lack of technological literacy, or inability to access information from housing agencies.

The following quotations from case coordinators offer examples of their activities in filling the four categories of gaps identified:

1) assistance with filling out forms/documentation

“I find myself very involved in the process of helping candidates to fill out applications to make sure they have the correct documents. I'm myself very involved in helping landlords as well, at least getting them the packet of information to send over.”

2) providing/sharing information/advocacy

“It's just the money and access to that money, though that doesn't mean that I'm not involved at that point because then I'm obviously involved in helping the tenant and helping the landlord to access that money and really taking on the role of a resource coordinator rather than mediation coordinator.”

3) assistance with translating/interpretation

The case coordinator at one CMC is proficient in Spanish and has done a great deal of interpreting for clients and assisting them with filling out forms. Other agencies contact the case coordinator to assist their clients with interpreting.

4) assistance to parties to address lack of familiarity with bureaucratic systems, lack of technological literacy, inability to access information from housing agencies).

“There's no communication between the parties and the RAAs directly. And so I've become the pipeline for that communication both in and out of the courts...So I spend a lot of time in courts giving RAFT updates, scheduling mediations, trying to see if parties are willing to work things out.”

“Access to internet, access to email, access to the basic resources needed to be able to submit a RAFT application are minimal in [X] County. And so, if there's no-- if there's not consistent follow-up, then those applications won't get processed. And so I've taken on the role of-- I'm that consistent follow-up. I have constant updates from the RAA that I receive after questioning, rather than having

the parties go to the RAA and not get a response for weeks. We have a spreadsheet that we have with them, and I'm usually able to get updates there fast and turn those on to the tenant, because if that wasn't the case, then there's no way we would see the amount of applications that we already have”

“The client was elderly and she was in subsidized housing and she didn't have a computer and she couldn't navigate the phone properly to try to connect to Zoom. So, we ended up putting her on speakerphone. You have to find other strategies to make things work. So, we had her on speakerphone and the lawyer was very happy to be on the mediation and she actually called us two or three times to try and set up more mediations with the client, because it was working well. And she had some other issues going on there, but it ended up being a successful mediation.”

One case coordinator identified a gap in TPP services that could be filled partially by expanding the role of the case coordinator and partially by providing housing mediation services:

“[My role as case coordinator has] certainly expanded. I think the best way to describe it, I think, and more so from looking at what tenancy preservation does and what TPP does, I feel like a lot of the times I've become almost the tenancy preservation person for cases that are not eligible for tenancy preservation, right? If there's no disability within a case, obviously it can't be referred to TPP. And so, there's a gap in resources there. I've realized that tenancy preservation, TPP can be more hands-on with helping a tenant to find resources, helping a tenant preserve their tenancy.”

The same case coordinator adds:

“That service, I think, is it's lacking for cases that are not eligible for TPP, but where the tenant still needs a lot of help and the tenant still needs a lot of hands-on help in navigating the system and doing that. And so, I've definitely seen my role transitioning to more of that than, and obviously, I'm still doing coordination and mediation services, things like that, and oftentimes mediation is the way to help tenants do that. But there's certainly a gap there that I've tried to fill almost through necessity because people call me almost asking that gap to be filled and I don't know where to refer them to because it's not necessarily housing counseling. It's TPP. So it's more just, "Okay, it's me." And then I'll do what I can.”

This case coordinator also sees mediation helping to fill this gap in TPP services:

“I think it could be partially filled by mediation simply because once the tenant, and it might be the back half of that resource thing. Once the tenant is made aware of other resources, once the tenant has had some help to get onto some of these resources, potentially like a rent pay or something like that, right? Then mediation could be the final step in the process to sort all these things out and to finalize everything. And really, just to then engage the landlord again in the process and

say that "Hey, this is what we've done. This is how the tenant is actually going to be able to help themselves stay in. We'll here, what do you want to do? What you want to do?" and engaging it that way. So I think mediation could be, it could fill the back half of that gap to say that, "Here's how we're going to formalize everything we've done." in the same way that I think tenancy preservation mediation fills the back half of that gap when TPP is involved as well. That will oftentimes, mediation is brought in to formalize things and to sort out any of the interpersonal issues. There's not much state resources, financial resources. They can't do anything if at the base, people, two people don't like each other and can't get along. And so mediation's obviously great for those interpersonal ones as well."

2. Is the Housing Mediation Program resolving landlord-tenant disputes in ways that is helping to preserve tenancy and/or generating alternative solutions or other benefits to landlords and/or tenants that is helping to ease pandemic-induced eviction/landlord-tenant disputes?

The evidence suggests that the HMP is resolving landlord-tenant disputes in ways that helps preserve tenancy, generate alternative solutions and other benefits to landlords and tenants and aids in easing pandemic-induced evictions and landlord-tenant disputes.

Preserving tenancy

An analysis of a sampling of 174 written mediated agreements reached between landlords and tenants through housing mediation offered by ten Community Mediation Centers during the 6-months period from January to June 2021 shows that 118 agreements, a little over two-thirds (68%), resulted in the preservation of tenancy, suggesting a strong correlation between housing mediation and the preservation of tenancy.

(Case studies 4 and 5 contain a detailed account by parties and mediators which shows that mediation can result in the preservation of tenancy and highlights the mediators' approach to addressing landlord-tenant relationship issues and facilitating parties with reaching an agreement that satisfies both their interests.)

Generating alternative solutions and other benefits to parties

Of the 174 mediated agreements, 56 did not result in the preservation of tenancy. In these cases, the tenant(s) agreed to move out and the landlord regained possession of the property. A closer analysis of the written language in a sample of these non-tenancy preserving agreements reveals solutions that were beneficial to the tenants. Examples of such benefits include landlords agreeing to waive a portion or the entirety of back rent owed, to cover trash removal fees, waive court fees, dismiss cases, not furnish a negative reference or proactively offer a positive reference for tenant(s), and to grant tenants extra time to move out. For the tenant, these non-tenancy preservation agreements can help to provide a "soft landing" into another housing situation. Additionally, some non-tenancy agreements include language indicating that tenants commit to working with either the

CMC's case coordinator, housing agency, or non-profit service provider to find alternative housing during the move-out process agreed upon between the landlord and tenant(s).

The following is a sample of excerpts from agreements that indicate the alternative solutions and other benefits that help to create a soft landing for tenant(s):

“The tenant agrees to vacate the apartment by (date). The tenant is vacating voluntarily and has alternative housing as of said date. Both parties agree (x amount) is owed in back rent. One month's rent of (x amount) is in dispute, however, the landlord has chosen to waive this amount. The landlord agrees to waive (x amount) I court costs.”

“Tenant agrees to pack and remove all personal belongings located at X by (date). Upon the tenant removing all belongings, landlord agrees to: a) draft a letter of good standing in support of tenant's goal of applying for the next rental unit, and b) send the District Court a motion or email to dismiss the outstanding case against the tenant, no later than (date). Parties to agree to cooperate to fulfill the RAFT application requirements to pursue the funding to the best of everyone's ability.”

“Tenant agrees to continue working with [agency] case worker to do housing searches. Tenant agrees to apply for the public housing...Landlord agrees to cover the dumpster charge prior to the move. The moving expenses will be covered by a funding from [agency]. If all previous points have been satisfied, parties agree to have the moving-out process completed by (date).”

Non-tenancy preserving agreements that incorporate benefits to parties, especially by creating soft landings for tenants, underscore the important role of housing mediation in helping parties generate creative solutions that are often beyond the purview of the judicial system. A theme that emerges from the mediator interviews is that while mediators strive to facilitate agreements between parties that result in the preservation of tenancy, they see their role as helping parties to achieve the broader objective of housing and community stability. There are cases when neither party wants to continue occupancy, especially when the unit conditions are poor—or worse, unsafe. In these cases, housing mediation, combined with the financial supports offered through programs such as RAFT and ERMA, assist parties to part ways on agreeable terms and furnish a stepping-stone for the tenant(s) to move into a more desirable housing situation. Reflecting on one mediation in which both parties' interests were met by agreeing to terminate tenancy, a mediator expresses working for the goal of housing stability:

“...when we can preserve the tenancy, that's obviously the goal, right? [But] with this situation, I remember it was both the landlord saying, ‘Look, I haven't gotten paid rent, I need to make money.’ And the tenant saying, ‘OK, great, I don't want to be here anymore either. I don't think the apartment is in a good condition.’ I think that their relationship was so strained because they were always going through this property manager and not each other...And so when I think of

housing stability, to me it's not only keeping your home, it's finding a new home that is livable. Like I will have so many conversations with landlords and I'll say, you wouldn't want to live here...and so our agency goal is to promote *household stability and community stability*" (authors' emphasis).

This same mediator stresses the important distinction between preserving tenancy and housing stability by recounting the details of another case. A tenant fell behind on rent. The apartment had a rat infestation, but she did not want to move out because she worried that moving would result in her children having to change schools. The landlord addressed the problem and agreed to waive the rent arrears, and even buy new furniture and clothes (this latter idea came from the tenant). This case highlights that while the mediators aim to preserve tenancy (i.e., keep tenants housed rather than unhoused), they also want to make sure that the housing situation is stable and livable and that the tenants also feel stable within their community. Had this case gone to court, the mediator speculated, the process would have dragged out and all the while the tenant's housing situation would have remained the same and the creative solution that emerged in mediation (i.e. the landlord buying clothes and furniture for the tenant) would not have arisen from an adjudication.

Housing mediation, as opposed to litigation, aims to facilitate landlords and tenants with pursuing their respective interests. For example, information from the interviews conducted with landlord parties and lawyers representing landlords reveal that when landlords are interested in removing tenant(s) from their property they are inclined to offer concessions, such as waiving past rent owed, to incentivize the tenant to move out. Additionally, interviews with tenants show that through mediation tenants use poor unit conditions as leverage in their negotiation to reduce or cancel past unpaid rent.

(For other detailed case studies of how housing mediation generates creative solutions and addresses issues of housing (in)stability and that incorporate the first-hand accounts of landlords and tenants, see case studies 1, 2, and 3).

Easing pandemic-induced eviction and landlord-tenant disputes

As cited in the literature review, government actions at the federal, state and local level have helped to prevent rates of eviction filings and evictions from skyrocketing during the pandemic. The eviction moratorium and the sizable investment by the federal government in unemployment benefits and rental assistance programs proved pivotal in mitigating the impacts of the pandemic on housing stability. In 2020, Massachusetts residential eviction filings and executions decreased markedly from 2019 – by 59% to 15,353 filings and by 73% to 4,655 evictions. The housing mediation component of the Eviction Diversion Initiative implemented in October 2020, when Massachusetts allowed the eviction moratorium to expire, has served to supplement actions to avoid evictions and provide the added value of being able to deal directly with landlord-tenant disputes, including relationship issues and communication difficulties, matters that financial assistance and the adjudication may not be able to remedy. The data on parties' satisfaction with mediation services, the tenancies preserved, as well as the creative

solutions and soft landings generated through mediation show how the HMP has been able to ease pandemic-related evictions and landlord-tenant disputes.

3. Does housing mediation help in preventing homelessness? Can a causal relationship be established between mediation and homelessness prevented?

A survey administered to mediators provides useful insights into how housing mediation has addressed evictions. Nearly all – between 30 and 31 – surveyed mediators provided information about the frequency of the different ways that tenant evictions were addressed during their housing mediations. Eviction developments that ranged from the initiation of the process to its inhibition were produced at housing mediations according to impressively large majorities of at least 80% of a minimum of 31 mediators. Evictions were initiated during housing mediations often (45%), sometimes (35%) or rarely (13%) according to 93% of 31 mediators. All 30 mediators found that evictions were prevented during mediations either often (47%), sometimes (50%) or rarely (3%). Ninety percent of 31 mediators noted that a conditional halt to eviction was achieved in mediation frequently (29%), occasionally (55%), or rarely (6%). Delays in the eviction date were accomplished according to 93% of 31 mediators often (48%), sometimes (35%), or rarely (10%). Finally, 86% of 31 respondents observed that tenant pre-mediation departures from their premises were frequent (3%), occasional (35%) or rare (48%). Only a single mediator indicated that such tenant departures were a frequent feature of his/her mediations.

Findings from interviews with mediation participants and HMP staff show a strong correlation between housing mediation (including the case coordinator component) and homelessness prevention, though a clear causal link between the two cannot be determined. Drawing from the interview data, several factors can be said to contribute to housing mediation as an effective conflict mediation tool resulting in the prevention of homelessness and preservation of tenancy:

- The state of the landlord-tenant relationship
- Parties' interests (whether landlords and/or tenants desire preserving tenancy)
- Coupling mediation with rental assistance programs

Mediators' reflections on their experience with the Housing Mediation Program also reveal some of the limitations of housing mediation in addressing the root causes and structural dimensions of the housing crisis that exacerbate the threat of eviction and homelessness.

The state of the landlord-tenant relationship

A significant factor contributing to the success of housing mediation in preserving tenancy is the state of the landlord-tenant relationship and whether the landlord intends to evict the tenant and whether the tenant wants (or is able) to remain in the rental unit. One mediator reported that the most common type of housing mediation they conduct involves the tenant owing rent and the landlord interested in keeping the tenant. In these cases, either the mediators or the HMP case coordinator (or, in some cases, both) meet

with the tenant to create a budget as a way of assisting the tenants to determine whether it is financially feasible for them to remain in the rental unit. In mediation, the parties work together to come up with a payment plan (in many cases with the help of financial assistance from RAFT/ERMA or other sources) and affirm their commitment to preserving tenancy. Generally, the landlord-tenant relationship is positive, communication is open, and both parties share interest in preserving tenancy. Nonetheless, being behind in rent can strain any landlord-tenant relationship, and so mediation plays an important part in helping parties to constructively engage with the problem and focus on shared interests. As one mediator shared, when tenants fall behind in rent, they tend to want to avoid the problem and as more time goes by and the debt grows, the harder it is for the tenant to feel that a solution is attainable. The payment plans reflected in so many written agreements speak not only to an agreement reached by the parties to move forward, but they also reflect a way out of the debt for the tenants. According to the mediator:

“Although agreements may look like simple payment plans, it's really like just getting everyone back on track, building up the trust with the landlord and the tenant again. And so I think that in my experience is helping them break it down. Setting up a schedule is so big in preserving their tenancy.”

Mediation represents an important intervention for landlords and tenants that directs parties away from either conflict avoidance or conflict escalation that results in the deterioration of the landlord-tenant relationship and leads to increased risk of eviction. By being attentive to the interpersonal dynamics in the landlord-tenant relationship and the financial situation of the tenant, housing mediation contributes to preserving tenancy (see Case Study #5).

In cases where the landlord-tenant relationship has deteriorated, mediators believe that “mediation has been really key in improving [relationships] and keeping the tenancy” and that “mediation works very well because it puts the parties face-to-face.” In the interviews, some mediators communicated that they regarded their role as facilitators whose neutral stance helped to lower the temperature between the parties, allowing them to rediscover positive elements of their relationship and find an amicable solution, whether or not they agree to preserve tenancy (see Case Study #4).

Parties' interests (whether landlords and/or tenants desire preserving tenancy)

Several interviewed mediators emphasized their facilitative approach to housing mediation: “Remember, we're here just to facilitate. And a big part of the facilitation is to get them to engage with each other.” Mediators expressed that their approach to mediation is to allow both parties—landlords and tenants—to pursue their interests. As one mediator commented:

“At the end of the day we are not agreement-seekers. We're not their saviors....[we're there] to give them an opportunity to create the space for them to maybe communicate for the first time in a constructive manner.”

While hopeful that parties will reach agreements that will result in preventing homelessness, mediators feel bound to the principle of neutrality and allowing parties to control the outcome:

“So, all you can control really is the process and neutrality and all these other things that you describe. Obviously, outcomes are determined through, you know, by the parties themselves. What are they going to agree to, when, etc.”

Mediators control the process; parties control the outcome. From this perspective, housing mediation contributes to tenancy preservation in so far as this is an outcome that the parties mutually agree to. With parties’ interests a significant factor in whether mediation contributes to preventing homelessness and when engaging in outreach efforts to raise awareness and increase utilization of mediation services, case coordinators and mediators use the strategy of emphasizing to potential clients that mediation allows them to exercise their agency and have control over how to resolve their disputes.

Coupling mediation with rental assistance programs

The coupling of housing mediation with robust financial assistance is another significant factor contributing to preserving tenancy. The quantitative data reveals a strong correlation between RAFT assistance (and other financial assistance) and preservation of tenancy. The provision of financial assistance to landlords and tenants to cover rent arrearages in part or in whole has provided relief during the pandemic and helped to resolve landlord-tenant disputes. Mediators concur that the expanded availability of financial assistance to tenants and landlords suffering from COVID-related housing crises helped to erase or lessen the debt burden of unpaid rent. In many cases involving RAFT assistance, however, mediation remained an important resource to both landlords and tenants. Out of a sample of 174 mediated agreements reviewed, 114 (64%) involved RAFT/ERMA or some other form of assistance. An analysis of the language written in the agreements of some cases shows that parties committing to applying together for RAFT was part of the agreement. In other agreements, the status of the RAFT application was cited as pending and parties agreed to return to mediation once the application was approved. In other cases, the tenant agreed to make “good faith payments” toward rent while waiting for the RAFT assistance to come through. Also, other agreements included language that seemed directed at local rental assistance programs, encouraging acceleration of the RAFT application.

Filing for RAFT requires the participation of both landlords and tenants and involves a lengthy application process. It is worth citing one mediator at length as the quotation indicates that mediation helps to prevent homelessness because mediators find themselves assisting parties through the RAFT application process, especially when communication between parties breaks down:

“So, specifically, what comes to my mind with mediation and helping achieve that [housing] stability is getting them [the parties] to work together. The RAFT process requires both parties to submit paperwork and communicate and work with each other. And sometimes that's not happening. So, a party will think that

they submitted something, but they didn't get confirmation from X, Y and Z, or the office, their fax number is wrong or something's happening, right. There's something stalling the process. And one party or the other might think, like, 'No, they're supposed to do this, I already did my part.' So that little bit of communication kind of breaks down with the process. But the process itself is kind of forcing them to do a little bit of work together and communicate. And that has been a substantial part of what mediation has become is helping them navigate the process. 'When are you going to submit? When can you submit? Do you need the paperwork from the landlord? Your lease? You lost your lease? Can the landlord provide the lease?' [All this] to get things to move along so that they can find a common solution because they're both invested in getting this kind of assistance, specifically talking about RAFT. And in situations where this breaks down, it has been because of the neglect of one party or another in fulfilling their responsibilities to receive the assistance. That's when we've had a little bit of trouble getting things to move along for them, for them to kind of find that that common space where they both, I think and that's, I guess, kind a little bit of my impartiality, I think they're both going to benefit from working together in this specific situation. And we let them carry on however they want to carry on. But in many situations, they themselves recognize that, like, all right, it's stalling a little bit. But we still need to give the other party time because at the end of the day, there's going to be that assistance that comes through."

Similarly, another mediator observed that the financial assistance puts "pressure" on parties to work together. While rental assistance helps to alleviate a heavy debt burden and preserve tenancy, housing mediation continues to play an important role in helping disputing parties work together and communicate constructively during the application process and smooth over any obstacles to the receipt of the aid (See Case Study #4).

RAFT assistance does not always cover the entirety of rent arrearages, one mediator observed. In those cases, parties either developed a payment plan or landlords agreed to waive a portion, or the entirety, of the additional rent owed, resulting in preserving the tenancy. These findings suggest that coupling mediation with rental assistance programs contributes to preserving tenancy as there are landlord-disputes where money is not the main issue needing resolution to preserve tenancy. Additionally, given that the dispersal of rental assistance depends upon the cooperation of landlords and tenants, mediation helps parties to engage with one another constructively around a common goal.

Acknowledging the limits of mediation as a homelessness prevention tool

Mediators also draw attention to the root causes of the housing crisis and the limits of mediation in addressing them. A director of a Community Mediation Center expressed confidence that the mediators "are really helping people to preserve their home or to access support to get another home." However, the director acknowledges that the housing crisis is a structural problem and so it is important to recognize the "limits of what mediation can do within the broader housing crisis." While housing mediation can offer a critical intervention for an individual or family facing eviction, housing mediation

does not address the larger structural issues underpinning the housing crisis (e.g., lack of affordable housing, lack of employment for a living wage, the capitalist system, etc.).

Additional findings that speak to themes in the literature review

Addressing power imbalances between landlords and tenants

As noted in the housing mediation and eviction literature review, an effective housing mediation program needs to address the power imbalance between landlords and tenants. Findings show that mediators are attentive to power imbalances between the parties in mediation and employ strategies to control a party's dominance and exercise judgment about continuing mediation if a party needs access to legal information to make an informed decision. One mediator's reflections about addressing power imbalances in mediation speak to these strategies:

“I, as a mediator, when I think that one of the parties doesn't have the knowledge necessary, I might suggest that although ‘I can't give you legal advice, it may be a good idea for you to find someone who can provide the information you need so that the decision you make is an informed one.’ And oftentimes, if I'm really concerned about, I said, ‘look, I don't think maybe at this point it's a good idea to reach an agreement because it seems there might be some issues here. So let's do this. Why don't we postpone and reconvene at another time?’ And sometimes I'd have a second mediation after the tenant might have gone and got the information he or she needed to be more able to come to an informed consent.”

Additionally, cognizant of the ways that the power imbalance between landlords and tenants manifests in legal representation, another mediator understands their role as making sure that both parties have access to legal counseling, though not from the mediator, and informs them that accessing the counseling may benefit them and help them to make informed choices:

“And you have to understand now, oftentimes the landlord is going to be represented by a lawyer and the tenant is not likely to be represented by a lawyer. So there is a power imbalance difference. We've got a, uh, someone that has more background and knowledge, and it's not our responsibility to provide it, but it is, I think, our responsibility to let them know that they should understand their legal rights, that we don't provide those legal rights, we don't provide that information, but that if they have questions about their legal rights, they should consult with someone to make sure they know what they're doing, that they know what the process is about. And I think I see that as our role to tell, to make sure that they have the information they need to make an informed decision. We're always talking about the voluntary nature of it, informed consent. And we also want to make sure they understand that this is something that's going to impact on them. Now, of course the tenant needs a place to live. The landlord needs tenants. So, I try to keep focusing on the mutual interest that they both have.”

The case coordinator in the HMP also helps to address power imbalances between tenants and landlords with legal representation and more resources compared to tenants, especially low-income tenants. Mediators expressed the view that the case coordinator plays a key role as a front-line worker to identify and address power imbalances before parties arrive at mediation by providing avenues for parties to access information that they may need to make informed decisions:

“...as far as, again, with having the cases screened that goes into that and I know that [the case coordinator] does a lot of work talking with these people and identifying some of the issues and identifying some of the imbalances in power and determining whether this is going to be a mediatable case. So, it helps the courts on one side because he's handling a lot of the paperwork and all of the communications and it helps the mediators because he's doing a lot of the groundwork, a lot of the grunt work as far as whittling away at what may or may not be necessary from the beginning. So, he'll be able to identify some deficiencies in one party or the other and guide them. And he can provide a little bit of more information.”

Additionally, having case coordinators shoulder the burden of case coordination allows the mediators to focus on mediation: “[The case coordinator] really makes our job so much easier. We just show up and we start getting into the mediation process and they're already into that mindset.” Early in the implementation of the HMP, some mediators expressed how challenging it was initially to balance their commitment to the principle of neutrality in mediation while also trying to make known to parties, especially tenants, the legal and financial resources available to them without appearing biased to the other party:

“...a part of our role is to remain neutral and to provide them with that information sometimes feels like a little bit like we might be favoring one side. And at the beginning, it was a little treacherous kind of navigating that because we're trying to provide information to both parties, both to the tenant and landlord...”

Nearly all housing disputes mediated in the HMP involve rent owed, which creates a power imbalance between the landlord and tenant. As one mediator explains: “If a tenant owes a lot of money, who are they to bring up issues with the apartment?” Tenants, therefore, may be reluctant to voice their interests and concerns in mediation because they fear eviction or feel that they are ‘in the wrong’ because they fell behind on the rent. One mediator described how tenants “feel more comfortable sharing what’s been going on and the issues that they have” with the case coordinator who helps to “empower them to bring that up like they have an equal seat at the table.”

Awareness of legal rights at mediation

In surveys and interviews, the evaluators asked housing mediation participants what they understood about their legal rights and responsibilities as they pertained to their housing dispute. Nearly all the party survey respondents (39 or 98% of 40) claimed to be aware of

their legal rights when mediating. A somewhat smaller but still very large proportion of responding individuals (35 or 95% of 37) professed awareness of the other party's legal rights. A sizable proportion of 47 respondents (over two-thirds or 68%), however, did not obtain legal advice or representation during mediation. Nearly one-third of respondents (32%) did receive such legal assistance. The awareness of legal rights and responsibilities of the parties when mediating does not seem to correlate with obtaining legal advice prior to mediation or having a lawyer present during mediation.

In interviews, parties' responses to follow-up questions about what they understood about their legal rights and responsibilities as they pertained to their housing dispute were also ambiguous, especially among tenants. Most tenant responses to the question referred not to any legal counseling or indication of knowledge of housing law, but rather to the introductory explanation that mediators offer to parties about the principles and process of mediation. However, mediators' assessment of parties' level of knowledge about their legal rights and responsibilities mostly register high. One mediator responded, "I think that the clients who are coming in the housing mediation program are definitely better informed than the people I saw coming in for small claims." And another mediator at a different Community Mediation Center noted a difference in the public's level of legal knowledge before and after the EDI started, attributing it to the expansion of services and access to legal counseling and information under the EDI:

"I think now that there are more services out there and we're catching things before they hit court, I do think that they are coming in more informed because, again, it really used to be word of mouth. It used to be Facebook. They would scream, I know my rights. And then I would hear them say something and be like, oh, I don't think I know this isn't right."

While parties' self-assessment and mediators' impressions seem to indicate that the level of legal knowledge of parties participating in housing mediation seems to be higher than before the EDI and the HMP, this formative evaluation report is unable to measure the extent to which parties understand their legal rights and responsibilities, the content of their knowledge, and whether such knowledge helped to level the power imbalance, especially in cases where landlords had legal representation and the tenant did not. At this point in the evaluation, there is not sufficient evidence to argue that parties' level of legal knowledge had an impact on the outcome of the mediation. Further research is required.

When offering a description of their approach to addressing the power imbalance in mediation caused by disparity in parties' legal knowledge, no mediator indicated that they provide legal advice to either party; rather, they provide legal information to parties. Cognizant of how even providing legal information to one party may give the other party the appearance of a breach of neutrality, some mediators stated that they avoid providing legal information during mediation. Having the HMP case coordinator furnish parties with legal information prior to mediation is a strategy used by some CMCs to preserve the principle of neutrality for the mediators while also trying to address the power imbalance between parties by providing legal information prior to mediation.

Challenges

Challenges and opportunities for learning/growth for the HMP also emerged from the findings.

Low referrals numbers & outreach efforts

A significant challenge facing the HMP has been that the number of referrals to housing mediation and actual cases mediated across the state have been much lower than originally anticipated. There appears to be considerable variation among Community Mediation Centers in terms of the numbers of referrals and cases mediated. The reasons for this variation seem to depend on circumstances. Some Community Mediation Centers have a history of strong relationships with the District Courts, housing associations and other housing-related partners before the EDI. As one mediator reflected: “...our center has gotten more referrals than a lot of the Centers probably because we've been doing this for a while.”

DHCD also acknowledges that the original design of the HMP did not account for the variation in partnerships among the twelve CMCs, with some CMCs having existing relationships and others needing to build relationships with courts and housing associations:

“I think one other piece that was very different from what we had at our agency had anticipated originally was the need to build new relationships with the courts in places where those relationships didn't already exist, and you see the difference between Western Mass, for example, where there was already an established relationship and so a large portion of the referrals from the District Courts had been occurring in Western Mass where that existed already. Contrasting with some other areas of the state where District Court cases are being referred to mediators, but they're being referred to different mediators with whom the courts had an established relationship, and we might have looked at it a little bit differently and not thought each center needed the same amount of assistance or would have the same volume of mediations if we'd understood that difference, the importance of those existing relationships with the court. So that was just a structural issue from our end that we didn't fully appreciate until we got really into it. A lot of Centers aren't even on the list for eviction cases [in the District Courts].”

Previous experience with housing mediation and prior relationships with District Courts, however, may not be the sole determining factor for the number of referrals. For example, another CMC, that has a close relationship with the District Court system, was receiving summary process cases, until the Housing Court laid claim to such cases and began to process them, resulting in a drop in referrals to community mediation.

For the most part, though, mediators and case coordinators attribute the low number of referrals to the increased availability of financial assistance programs during the pandemic. As one case coordinator shares:

“Well, in the beginning, we got bombed with referrals. We got a page of them. And we were falling a little behind over handling it. And most of those cases were straightforward and they just dealt with arrears of over \$10 000. And now they've kind of petered out, and we don't get that many from the [RAA] ... Well, just since they increased the federal funds. I think we've only had one referral to mediation from [the RAA]. As long as [there's] enough money to satisfy the back rent issues I don't think there's going to be a huge influx of cases. But once the money is used up then most likely there will be an increase in cases.”

Case coordinators (and mediators to some extent) across CMCs dedicate a significant amount of their work time (and in some cases, personal time outside of work) to outreach efforts both to increase referrals and establish referral pipelines in anticipation of an increased need for mediation when the financial assistance programs decrease.

In addition to working with the District Courts to offer housing mediation, many mediators and case coordinators voice strong opinions about the importance of working “upstream”—that is, with parties before summary process complaints are even filed—as a way of resolving disputes before tenants face evictions and landlords commit to the time-consuming and costly eviction process. With this aim in mind, CMCs invest not only in outreach efforts, such as one-off events like giving presentations at agencies and speaking about mediation at town hall meetings, but also in *building trust* within the communities they serve and with a broad range of agencies, organizations and institutions that serve and interact with communities that are at a high risk of eviction and housing instability. For some CMCs, their outreach and trust-building efforts have paid off in terms of receiving an increase in self-referrals and being able to work with parties early on:

“...the upstream is, I feel, like it's very important. I can look at my case submission for this Monday. I think all my cases were all self-referrals. And I kind of like that. Not that I don't like court cases, I feel like the court case is like a time bomb or something, waiting for either [when] the moratorium ends or whatever, it will explode quickly or something. I feel like the upstream cases give us a little more room to work with parties. It's not so imminent you act now or else kind of stuff.”

DHCD proposes improving outreach efforts to underserved communities and providing more intensive training for Community Mediation Center leadership on enhancing outreach efforts to the District Court system (especially where partnerships are lacking and where CMCs are not on the approved list of programs for receiving referrals to mediate summary process cases) as remedies for this challenge.

Interviews with CMC staff seem to indicate that considerable time is devoted to outreach efforts, but several staff acknowledge that more targeted efforts could be tailored to the needs and demographics of their respective communities. One CMC sees a need for reaching linguistically diverse communities while another would like to target landlords to inform them of the benefits of mediation. The evidence, however, does not suggest that the low referrals numbers at some CMCs are the result of a lack of trying on the part of HMP staff to conduct outreach.

HMP mediation services and the Housing Court

The Housing Court may benefit from allowing Community Mediation Centers provide mediation services to landlords and tenants in cases before the Housing Court. Offering mediation as an option to disputing parties in the Housing Court could contribute to the resolution of parties' housing issues while increasing Housing Court efficiencies and expanding the scope of services from the publicly-funded HMP and the EDI. Based on interviews with research participants, there appears to be significant interest in a partnership between the Housing Court and Community Mediation Centers. Research participants were asked if Community Mediation Centers have access to the Housing Court to offer mediation services and, if not, did they think that community mediation could add value to the Housing Court.

In their experience, mediators and case coordinators were nearly universal in expressing concern over the lack of referrals of housing cases from the Housing Court. One mediator explained that efforts to partner with the Housing Court were unproductive:

“...we've tried to talk with the Housing Court to see if there's an opportunity to mediate there, but they use their own mediator. So, it's like 'get off our turf.' So that's where you might see we have more District Court cases as opposed to other Centers...it's so hard, when I get a referral and its Housing Court involved and there's really nothing we can do for them except make a referral maybe to legal aid or something like that. I do think it makes things really challenging because, well, one, like if a landlord files in Housing Court that's out of the tenant's control, they can't transfer it to District Court.”

The most common reason offered by research participants to explain why a CMC-Housing Court partnership has been elusive so far is that the Housing Court employs its own housing specialists who provide mediation when the judge sends parties to a mandatory case conference to reach an agreement (called a tier one event) before setting a trial date (a tier two event) if an agreement is not reached. Echoing the explanation that the Housing Court has its own “housing mediators”, other community mediation staff reported, “We don't really work with the Housing Court. They don't really like to share their cases.” Notably, none of the interviewed mediators or coordinators mentioned whether or not their CMC was approved as an ADR provider for the Housing Court.⁶ However, primarily on the basis hearsay, some research participants questioned whether the approach used by housing specialists to mediate cases reflects the facilitative approach that community mediators use and find successful in the HMP:

“...housing specialists, from my experience and those who have sat in on, the mediations are very different. They, I talk about how before it was disadvantaging the tenants. I think that's something that is really important. And we want to make sure that everyone is empowered. But in Housing Court, I do believe they use a more direct approach and it's hard.”

⁶ To date, two CMCs have received approval as ADR providers for the Housing Court.

Another research participant recounts a case in which a tenant went to the mandatory tier one event of case conference in the Housing Court and reported back to a case coordinator that they felt intimidated by the landlord and described what they experienced with the housing specialist as “that is not mediation.” The tenant asked the case coordinator if it would be possible to try housing mediation at the Community Mediation Center and was able to convince the landlord to try mediation before going back to trial in the Housing Court.

A lawyer who has observed case conferences also expressed concern with the mediation offered by housing specialists in the Housing Court:

“...the reality is in the Boston Housing Court, and I've had people mediate, quote unquote, “mediate” my case, who are horrible. Horrible. They don't know anything and they don't play any significant role. They just sit there while the lawyers argue and then it's over. So, to me, like, that's not a mediation. And I mean, that's no, I don't mean to disparage anybody at the Housing Court because I know they try hard, right? But most of the housing specialists, they are not lawyers.... I don't want to speak out of school because I don't know what the training that some of the housing specialists get. They may know the housing law. They don't ever really get into that. That's not how it works. When you go to mediation in Housing Court, you know, you have, you sit around in one room where you talk about it and then you have a breakout and you or you say, can I talk to you outside, please? And you pull the mediator outside and you say, I'm not going to agree to move out. It's just not going to happen. My client has nowhere to go. And there are conditions here and there's a security deposit violation and they're not moving. And then they go back in and say, OK, well, there's not going to be an agreement today, so we'll just send it back to court for you to get a trial date. And that's what happens. So I think I think it's a little unfair because if you're the mediator and you are somebody with a B.A. and now you're in a room with two lawyers who are duking it out, what are the odds that that mediator is going to get in the middle of it and say, ‘you're both wrong, let's go to break out rooms,’ like they're going to take control of it? It doesn't, it just doesn't happen usually. I'm not saying it never happens, but in my experience, I've not ever had, like, a mediator who's been able to take control and feel like they were running the show.”

The concerns among some research participants about the Housing Court appear limited to the Court's approach to mediation and apparent resistance to allowing Community Mediation Centers access. They acknowledge the expertise of the Housing Court specialists to handle complex housing cases, but lament the missed opportunity of not allowing community center mediators trained under the HMP to offer their services to parties for whom mediation may be an appropriate alternative to litigation:

“I think what they [i.e. Housing Court] are really good at is they're good at dealing with complex issues, right, that's what they're there for, its Housing Court. And so there are times where I'm like, wow, this is a really complex case. It's

probably better suited there. But I think for, in terms of the mediations, I do think when we talk about expanding the conversation and getting everything and letting the tenants and landlords decide and not giving suggestions, I do, like, I think my personal thing is it's a more evaluative approach which can be really hard in these types of cases. So, I think the style is the big difference and in the types of mediations that we facilitate.”

Echoing the point that Community Mediation Centers could offer expertise in ADR for housing disputes, another mediator states:

“Having people do seven housing cases a day means those people must be pretty expert in the law and they must be pretty good on their feet to move things along. And so maybe there is, maybe we should just get out of the business and let Housing Court do it. I don't know. On the other hand, I, from what I hear, but this is just what I hear, that Housing Court doesn't do very well in conflict resolution. So, I think we're better we're probably better at that.”

Similarly, with respect to the question whether Community Mediation Centers have something to offer the Housing Court, a mediator responded:

“Oh, absolutely. As with any type of mediation that we're going to do, to be able to really delve into the interest of parties and look at relationship, communication, those sorts of things, and sometimes they exist and sometimes they don't. But you can still mediate either way. And I've seen some wonderful things happen in housing mediation that you would never expect. I mean, they come in thousands and thousands and thousands of dollars apart. And I think we've had a pretty good success rate and getting people to be able to really identify what's important to them and make those decisions to move forward. As I said, whether it's a landlord helping a tenant to move forward and get out so that they can then move a family member in or move someone in. I mean, all those things you can talk about and we're not talking about litigating it from a legal perspective. We're talking about what's important to people. And that's the beauty of mediation. That's the power of it.”

Perplexed by the establishment of a separate court to litigate housing disputes, a mediator expressed a desire for more “unity” between the Housing Court and Community Mediation Centers:

“I come from [out of state], there are not two separate places where your housing cases can go. I think, the concise nature of other states where housing cases can be in one place. I just don't get it, structurally, the whole bifurcated weirdness-thing, I don't get it, from a decision maker perspective, I don't understand how it happened... I wish that we were united. I wish that the housing specialists were actually mediators and, or we were connected in some way, we could see the benefits of both processes.”

Some Community Mediation Centers have found a workaround to not having access to providing mediation services in the Housing Court by working upstream—that is, providing mediation to landlords and tenants before they take their case to court or, if a case has already been filed, before the trial date:

“But I do think our efforts getting things beforehand and I will say from the RAA side of things, we've gotten referrals from them before, like, a Housing Court case has been filed, and I consider if I was having, if I had it before and then you file, I'm still going to mediate it. And so that's kind of like a workaround that we've used. And so, I think it is a really, really challenging issue. And I don't see it changing. So, I think the only way we can get around that issue is the upstream work.”

Offering mediation to parties upstream before they go to court, whether Housing or District Court, was also the preferred option of another mediator:

“It just seems like everything comes too late to both places, to Housing Court, to District Court, to the people who are starting to have problems with housing, that they should go to mediation early would be so much better.”

Despite the barriers Community Mediation Centers face with extending their services to the Housing Court, research participants were unanimous in their desire to persist in finding ways to communicate with the Housing Court about the benefits of housing mediation and to discuss exploring CMC-Housing Court partnerships. When asked with whom Community Mediation Centers would like to partner, Housing Court was included in the answers of all the respondents.

Measuring the “success” of the HMP

Current reporting practices that emphasize quantitative measures of success—for example, the number of referrals, mediations, and tenancies preserved—capture a narrow definition of success, leaving out other definitions and measures of success that can capture the larger impact of the HMP. The topic of measuring the success of the HMP emerged in interviews with mediators, case coordinators and in the debrief meeting with DHCD.

Mediators and case coordinators expressed a desire to document efforts and outcomes that current reporting tools are not capturing, mainly success stories that recount the impact of the HMP on parties. As a case in point, one case coordinator communicated that many cases referred to the center do not go to formal mediation because the case coordinator helps the parties to find resources that address the issue of rent arrears. By connecting the parties with resources and serving as a channel for communicating the status of the RAFT application to parties, the case coordinator's efforts contribute to tenancy preservation (without parties having to go to mediation). These cases in which tenancy is preserved through the assistance of the case coordinator in referring parties applications for financial assistance are counted on reports as “too few parties for mediation”. The case coordinator felt limited by the current reporting tool and struggled to find ways to report on the efforts to assist parties outside the frame of formal mediation

that result in one of the main aims of the HMP: preserving tenancy. Another case coordinator affiliated with another center concurred with this case coordinator's challenges with reporting:

“Success is definitely measured in very different ways. I don't really think that we capture-- I don't think that the database right now that we use captures all the work that is done, because the end goal is to take it to mediation and sometimes if it doesn't go to mediation, I believe that it doesn't fully capture it. It's counted as a case even if a party declined mediation. It's still counted as a case but I don't think that all the work that was done behind the scenes is really seen and I think that as a whole, it's something that should definitely be worked on, kind of capturing all that, the important stuff, all the work that went into that even if it didn't go to mediation. And I don't think that is currently being captured, but it should be.”

In addition to the limits of reporting tools as a missed opportunity to highlight the broad range of activities and efforts aimed at serving clients, case coordinators and mediators also expressed unease with the preservation of tenancy as the main metric of success. For example, one case coordinator argued:

“I don't agree with the idea that tenancy preservation should be the metric of success because I've dealt with a number of cases where the tenant's behind on rent a good deal, but there're so many outstanding issues with the landlord. I've definitely had some issues of racism on the landlord's behalf towards tenants or tenant abuse, and so I've basically talked to the tenant and said, "Look, at the end of the day, this isn't a place that's healthy for you," and so those are cases where a soft landing date is a better metric of success than tenancy preservation. Preserving a tenancy in which somebody is unhappy or being abused is not a success, and so it really is case-by-case to see what is considered a success, what's not. Overall, it's whether or not a case can go to mediation. Those are generally successful.”

Another case coordinator agreed with this point, adding that factoring in the psychological, emotional, and mental health impact on the parties and parties' families of housing stability broadens the notion of success for the HMP:

“I feel like the housing stability is the impact. It's very, very important emotionally and there is a lot of emotional impact that people can sleep better knowing that they're not going to be homeless because that's one of the concerns that many of us—many of them said that to me. They go, ‘Uh-oh, they're going to kick me out. What am I going to do?’ To take that away from a stress level and then a lot of them have either disabilities or some kind of health issues. That just aggravates everything when you have that kind of a cloud over your head. So I really feel like the impact is not just how many dollars. But it's psychological, emotional, mental health, and mental health for the family.”

The same case coordinator underscored the argument with a story of one family who participated in the HMP:

“They have two teenage girls. And because of the housing situation, the father told me that one of the girls start cutting and because she just [got] so frustrated because they are already isolated, not able to go to school for such a period of time and all that to see their friends. And on top of that, they might be living in a car and just the prospect of that just scares the lights out of them. So, yeah, I think all of that-- I feel like the money is very well spent. And over time, when they look back [at] this period of hard time and we all come together to help them as a society and more people actually do-- you do have people who genuinely care, and it makes a lot of difference.”

On the topic of measuring the performance/success of the HMP, DHCD acknowledges that current reporting practices capture mainly quantitative data and that quantitative data makes up the greater share of the information shared with political decision-makers:

“In terms of mediation, it hasn't been on the radar terribly much when we do present to higher-ups and inevitably, the quantitative data tends to be what we report on a lot when we're talking to higher-ups, and we've kind of kept this down under the radar a little bit because the numbers aren't there in terms of the number of mediations that are happening.”

In terms of the number of referrals and actual mediations conducted, the numbers are not as high as originally anticipated. However, as DHCD notes, “where mediations are happening it's extremely successful.” Overall, from DHCD's perspective, the overall success of the EDI program lies in the sharp reduction in eviction filings compared with pre-COVID numbers and sees “a pretty direct correlation between being able to help people with arrearages [through financial programs] and helping to prevent evictions.” DHCD acknowledges that the quantitative data only captures a part of the impact of the HMP and welcomes further qualitative evaluation of the HMP, mainly the effectiveness of outreach efforts in expanding understanding of mediation as a tool to resolve disputes and in expanding the utilization of mediation.

An agreement, therefore, exists between operational staff (i.e., mediators and case coordinators) at the CMCs and administrative staff at MOPC and DHCD about the need to incorporate more qualitative data about housing mediation to supplement the quantitative measures of success, which provides an important window of opportunity to redesign reporting and evaluation practices of housing mediation.

Lack of diversity in pool of mediators to serve diverse and under-served populations

Case coordinators across the CMCs were keenly aware of the demographic composition of their respective center's pool of mediators and whether it reflected the characteristics of the population served--and, in most cases, it did not. The composition—in terms of gender, race, language proficiency, etc.—of the CMCs' respective pool of mediators greatly influences the ability of the case coordinator to take into consideration factors other than mediator availability when assigning cases. One case coordinator expressed wanting to assign mediators who matched the age of parties or who could provide gender

balance at the table, but was unable to because of the lack of diversity of the pool of mediators:

“So due to our mediator pool right now, it's really hard to-- because they're all older and they're all pretty Caucasian. So if it was up to me, of course, I would have way more of a diverse pool with different age groups and just different faces because I know how important that is. When you're in a mediation, you kind of want to feel like someone will understand. So it would definitely be background and gender, and I would try to mix it so that both parties feel comfortable.”

At some CMCs, staff are actively engaged in efforts to recruit individuals to volunteer as mediators directly from the communities they want to serve. For example, at one center with a significantly large number of cases involving Spanish and Portuguese speaking parties, mediators and the case coordinator are actively recruiting volunteers from places of worship and cultural centers who speak Spanish and/or Portuguese.

Another case coordinator, however, observed that recruiting diverse mediators is challenging because the positions are voluntary and suggests creating paid mediator positions to help attract and retain a diverse pool of mediators:

“I think that paying mediators would kind of maybe help because think about it, a certain age group, a younger age group, they're always working or trying to work or in school or something like that. So I mean, the older population of the mediators that we have, they're the ones that have the extra free time and they can block out a few hours of their day and do that because they've already kind of had their chance and worked and did all that extra.”

Collaboration Between DHCD, MOPC and CMCs

The debriefing meeting between DHCD, MOPC and the CMC consultant indicated successful collaboration between the different organizations involved. The collaboration resulted in open and transparent communication, joint problem-solving, resource sharing, joint decision-making, free sharing of information

MOPC: HMP has been a great way for MOPC to raise its profile, deploy its collaborative network to respond to a housing crisis, and form new partnerships, for example, with DHCD.

CMC: EDI is a program that has been needed for a long time, well before the pandemic, and should continue.

DHCD: EDI was meant to be an emergency response to an emergency situation. Now, DHCD sees the value of “building a foundation for a longer-term response” and sees the “longer-term potential for a collaboration, referrals, having more tools in the toolbox to help people.” DHCD also wants to build on the work of SHERA to engage more with affordable housing landlords.

DHCD, MOPC and the CMCs highly rated the making of compromises, problem-solving, conflict management, the meeting of challenges and deadlines, and the level of communication between organizations.

DHCD rates all these areas highly.

CMC has found the collaboration among the CMCs and with MOPC very helpful and would like to see individual calls with coordinators and directors.

Appendix D: Case Studies

Housing Mediation Program Case Studies

Methodology

The following five case studies provide a rich, detailed narrative description of the Housing Mediation Program, relying on information gathered from the following data sources: referral forms to Community Mediation Centers, HMP screening and intake forms, mediated agreements, participant surveys and interviews. These case studies are part of an evaluation that MOPC conducted to demonstrate the value of the HMP as part of the Eviction Diversion Initiative. The Community Mediation Centers provided the referral forms, the screening and intake forms, and the mediated agreements. These documents yielded relevant information pertaining to the nature of parties' dispute and COVID-related housing crises. Surveys conducted at the conclusion of mediation sessions gleaned participants' level of satisfaction with the HMP and collected their feedback and comments.

The post-mediation participant survey also asked participants if they would be willing to talk with an evaluator about their mediation experience. The researcher/evaluator then contacted the participant by phone within a 4–10-week period after the mediation session to conduct a semi-structured interview.

There was a total of 47 respondents to the post-mediation party survey. Of those, 27, over half of respondents (57%) indicated that they would be willing to talk about their mediation experience with an evaluator. The evaluators reached 20 of the 27 respondents by phone and was able to conduct 17 interviews (8 tenants, 5 landlords, 3 lawyers representing landlords, and 1 lawyer representing tenants). Multiple attempts were made to reach participants if they did not respond to a cold call the first time. In some cases, respondents answered the phone, but declined to participate or said that they were not available. In one case, a tenant picked up the phone and said that she was in the middle of a housing crisis. She had left her apartment and was trying to get into a shelter but needed a copy of her lease. She was in no position to participate in an interview. The researcher/evaluator asked her permission to pass along her information to a contact at DHCD to inquire if any additional assistance or referrals could be made on her behalf.

In addition to party interviews, the evaluators also interviewed mediators who mediate cases through the HMP. To date, 6 interviews with either one or two mediators from 6 of the 12 CMCs across the state were conducted. To recruit mediators for the evaluation, the evaluators contacted the directors of CMCs to inquire about setting up interviews with mediators.

To make comparisons across cases, the evaluators asked participants the same questions, while also allowing for flexibility by asking questions based on the direction of the participants' responses and the specifics of the case. The evaluators devised and carried-out an evaluation plan approved by the Institutional Review Board at UMass Boston and took all steps to minimize the risk of compromising participants' confidentiality.

By providing an in-depth account of specific cases drawing directly from the experiences of participants (i.e., tenants, landlords, mediators, and lawyers), the case studies complement the quantitative data and statistical analysis by highlighting the voices and experiences of individuals directly impacted by COVID-related housing crises and who benefited from the HMP and related EDI-services. Some of the case studies incorporate findings from the housing literature to contextualize observations made in specific housing mediations. The case studies also add value by offering a means to examine hypotheses about correlations between housing mediation and the preservation of tenancy and housing stability within the context of individual cases. Not every case study presented, however, results in the preservation of tenancy; rather, agreement reached between the landlord and tenant may reflect a mutual desire to move out of the property. By interviewing the parties, the researcher/evaluator can pick up the story where the written agreement left off to learn how the parties are faring and how mediation may have helped to create a *soft landing* for the tenants—that is, the means with which to move out and into another property that suits their needs and meets their interests.

Case Study #1 – Helping to get parties unstuck

The referral from the housing authority to the Community Mediation Center aptly captured how the tenant, M, was feeling about his dispute with his landlord: “He feels stuck and doesn’t know how he will be able to move forward.” With assistance from the Housing Mediation Program, M was “hoping for some help trying to negotiate with his landlord.”

M and his family were in the middle of a COVID-related housing crisis. M had been laid off from his job due to COVID. The combined total of unemployment assistance that M and his pregnant wife collected was not enough to cover rent, let alone the expenses for caring for their 18-month-old daughter. They fell behind in rent and by the time M was referred to the Housing Mediation Program, he owed the landlord \$9,000 in rent arrears. Before COVID disrupted his employment, he had never missed a payment during the four years he had been living in his landlord’s sole private market property.

The landlord, B, was also struggling during the pandemic. She had sustained injuries from a motor vehicle accident that left her out of work for months. The rent she collected from her tenant went to pay her mortgage. With both she and the tenant out of work, preserving housing stability for everyone involved was going to be a challenge. If it had not been for B’s mother stepping in to cover the monthly mortgage payments, she would have fallen behind. With support from family so crucial for B to weather the pandemic, B and her family decided to pod up, a strategy many families employed to stay safe and pool resources. With extended family members moving back in, B felt she had no choice but to repossess the unit she was renting out to M and his family. She issued a 30-day eviction notice and M, enrolled in a CDL training program through MassHire in the hopes of regaining steady employment, now had to start looking for another place for his growing family. Unemployed, finding a new place to live was all but impossible, as M recounts, “Every landlord, when I’m looking for house, apartment, and every agency,

they...whenever they find a house, they ask me my income: what's my job? I don't have a job."

This is when M started to feel stuck: he knew he owed thousands of dollars in rent arrears to his landlord who now wanted to evict him, and he did not have sufficient income to move into a new place. A positive four-year relationship between tenant and landlord was beginning to strain and communication problems between them were starting to emerge. B was calling M repeatedly asking when he would start paying his rent and the arrears he owed. The mediation center received the referral, contacted both parties, and scheduled an online mediation.

In the meantime, M applied for and received assistance from RAFT. Because the landlord was looking to end tenancy, the financial support from RAFT shifted to M to cover initial rent wherever he managed to find a new place. Despite the communication problems between the landlord and the tenant, conflict was not high, and they were able to look past their own problems to recognize the difficult situations they were both in. About the landlord, M said, "She's very good lady and has right to ask for her money and I have to pay her money back." And B empathized with the tenant's situation. When M told her that he was coming up empty-handed with his apartment search, she decided to help him. She took him to meet a friend who had a unit available and through that personal connection the friend agreed to rent her apartment to M and his family. RAFT was applied to the first and last month of rent, as well as for the first few months of rent.

By the time the two parties participated in their housing mediation session, M had moved into his new place and the main issue needing resolution was paying back rent arrears. The mediators who facilitated the session helped the two parties to build upon the solid foundation of trust and mutual respect M and B shared to address the communication issues they had around the unresolved issue of unpaid rent, as one mediator observed: "...[the] relationship that they had, which was based you know, it ended up being based a lot on trust and mutual respect of one another to be able to move forward, to be able to, at all, it gave them a chance to talk, to really explain where they were both coming from."

Through mediation, the landlord "recognized that there was no money to make that back payment, which was several thousand dollars, more than small claims [court]," the other mediator reported. And the "tenant recognized that he owed the money and was willing to work to agree to that." As the mediators explained, the dispute was more complex than a simple small claims dispute in which one party owes the other party a certain amount and the agreement reflects a payment plan to which both parties agree. In this case, the parties' interests went beyond money: "...it wasn't all about money in this case...it was important to her [the landlord] that they [the tenants] get settled and have a place." For these parties, housing mediation provided a structured space for them to address communication issues and commit to upholding their responsibilities to one another (and, in a way, the landlord went beyond her responsibilities by assisting the tenant with finding a new place).

Taking into consideration the landlord's own financial situation, the mediation agreement reached between the two parties included a commitment on the part of the mediation

center to explore with the case coordinator other possible funding resources to assist with arrearage owed by the tenant. The housing coordinator referred the landlord to a deferred mortgage payment program; however, she did not qualify because she was not behind in her payments. Though not written up in the agreement, the landlord acknowledged that she was calling the tenant too many times to inquire about her money, and both parties shared after the mediation that communication had improved between them.

After mediation, both parties expressed satisfaction with the process. “I’m very happy that I get mediation support,” the tenant reports. “So still, like, I have problems because I didn’t pay that money back, but it is a good thing that they help me to talk to the landlord nicely before she take me to court or before she take another action. So, yeah, I’m very happy that they helped me out with communication with the landlord.” The landlord, who at the time of writing this report has yet to receive any payments from the tenant, expressed satisfaction with the mediation process, although she was not happy with the outcome: “I was satisfied with—let me say I was satisfied with one part, not satisfied with the other part.” According to her, the agreement reached was “vague” because it did not include a specific payment plan, something the tenant was unable to commit to because of his current financial situation; however, the tenant agreed in writing and reiterated during a post-mediation interview, that he understands that “she [the landlord] has a right to ask [for] her money.” M agreed to re-enter mediation as soon as he is in a situation financially to begin paying back the money he owes.

Mediation, coupled with the support of the case coordinator, provided crucial support to both the landlord and tenant. Although tenancy was not preserved, housing mediation provided a constructive space for the parties to continue working on issues (i.e. rent owed) even after the tenant moved out.

Case Study #2 – Creating soft-landings leading to housing stability

Well before sitting down to mediation, the tenants felt that their landlord had been neglecting them, just as she had neglected to do anything about the tree rotting in their backyard where they did not feel it was safe for their child to run around and play. The tenants were also upset about the conditions inside the apartment. The landlord lived in another city and had a local property manager deal with the tenants’ concerns, but they found their requests for repairs going unanswered. During the pandemic, the tenants were spending most of their time in the apartment. One of the parents had to stop working to care for the child because the school closed due to the pandemic and no childcare was available. With the loss of income, the family quickly fell behind in paying their rent. By the time the landlord filed a summary process complaint, the tenants owed about \$8,000. When the parties appeared in District Court on Zoom, the tenants requested to resolve the dispute through housing mediation. In response, the landlord directed the tenants to deal with her attorney, which they interpreted as yet another sign that the landlord was uninterested in dealing with them directly. This was not their first time in court together. The tenants had sued the landlord over another matter and won. According to the mediator who mediated this case, “This was a situation where the tenant-landlord relationship was completely strained.”

Preserving tenancy is almost always the main objective of the Housing Mediation Program. However, when neither party wants to continue occupancy, especially when the unit conditions are poor—or worse, unsafe—then housing mediation, combined with the financial supports offered through programs such as RAFT and ERMA, can help both parties part ways on agreeable terms and furnish a stepping-stone for the tenants to move into a more desirable housing situation. According to the mediator in this case:

“...when we can preserve the tenancy, that's obviously the goal, right? [But] with this situation, I remember it was both the landlord saying, ‘Look, I haven't gotten paid rent, I need to make money.’ And the tenant saying, ‘OK, great, I don't want to be here anymore either. I don't think the apartment is in a good condition.’ I think that their relationship was so strained because they were always going through this property manager and not each other.”

In the mediation, an attorney represented the landlord while the tenants were without any legal representation. In most cases, when an attorney is present it is for the landlord, not for the tenant, which can present a challenging power imbalance skewed against the tenant in housing mediation. All the mediators spoken to across the Commonwealth for this evaluation communicated a commitment to neutrality and impartiality so as not to appear in favor of one party over the other. However, they also expressed concern about a power imbalance in mediation and how that may influence the tenants’ ability to fully voice their concerns and resist pressure to accept an agreement they may otherwise not want. One important way that the Housing Mediation Program helps to address the potential risk of power imbalance in mediation, while maintaining a commitment to neutrality, is by having the *housing coordinators* refer parties to housing and legal counseling prior to mediation, providing both parties with an opportunity to inform themselves about their legal rights and responsibilities. In this case, according to the tenants, having access to counseling along with receiving a clear explanation of the basic principles of mediation helped them feel empowered in the mediation even though the landlord had an attorney present: “It was very clear that, you know, if we weren't happy that we didn't have to agree to anything in mediation...we had every right to go to court.”

Attorneys “can make or break a mediation,” according to the mediator who mediated this case. A lot depends upon the attorney’s approach and orientation to mediation: Are they there to *win for their client* or to *play a facilitative role* by assisting their clients to clarify their interests, formulate their positions, and engage in creative problem-solving with the tenants all within the boundaries of housing law? In this case, based on the mediator’s assessment, the attorney “helped keep things on track and really highlighted what was beneficial for both [parties], and so it was actually really nice to have an attorney in the room, whereas sometimes it’s not good at all.” The tenants, too, valued the attorney’s presence at the table, even though he was there to represent the landlord: the attorney “was trying to help move things along,” they said. The lawyer’s own reflections on this case confirm the assessment by both the mediator and tenants that lawyers can support the success of housing mediation:

“Landlord-tenants, so is pretty specific about what your rights are as a tenant, what your rights are as a landlord with all the COVID regulations that come into play. All those things also need to be considered and you have to take into account where you want this to go. What is the ultimate goal of each party? [To] the landlord, are you just looking to collect your back rent? [To] the tenant, are you looking to stay? Are we looking to do something else? In this situation, the landlord was looking to ‘I just want this tenant out. I got to do something to get rid of the tenant.’ We’ll make an offer that we will reduce the arrears by a significant enough amount that would make it worth their while to agree to get out. So we did. The other option is, if we didn’t do that, under the new rules, we’re going to have to schedule a trial because you’re not going to resolve it today. And that would mean that this would have to be put off by at least two to three weeks before we actually get a trial date in front of a judge. And then the judge might not make a decision right away and might take a week or more to decide what to do with the case, and all the while we have the specter of CDC hanging over our head that might say, ‘the tenant filed the CDC affidavit, you’re not doing anything. You can get a judgment, but you can’t get him out...’”

Together with the mediator and an attorney playing a facilitative role and acting as spokesperson for a landlord disinterested in direct communication with the tenants, both parties were able to reach an agreement that reflected their interests. The landlord wanted to regain possession of the apartment and was willing to waive half of the rent arrears owed. The tenants’ goal was: “Just give me the time to get out and I’m not paying you all the money that you think we owed.” Neither party wanted to drag out the process in court, which points to another significant benefit of housing mediation: an *efficient* alternative dispute resolution mechanism that unloads the courts’ burdensome caseloads and allows parties to resolve their issues quickly. The efficiency of housing mediation is particularly relevant for disputes involving issues related to tenancy. As one mediator observes: “And when it goes to court, it turns into a big, ugly fight. What I see is in District Court, they transfer to Housing Court. They all get lawyered up. It goes on forever. And it’s still, in the meantime, *nothing’s happening* [author’s emphasis].” Lengthy court proceedings can be detrimental to tenants who remain in subpar housing conditions waiting for a resolution. In this case, the tenants, unhappy with the poor unit conditions and unsafe backyard, wanted to avoid Housing Court by finding a quick resolution through mediation. Furthermore, in mediation they were able to use the unit condition as leverage for not agreeing to pay the rent arrears in full. According to the mediator, there is no guarantee in court that the judge would factor unit conditions into their judgment. Mediation, on the other hand, guarantees that a broader range of issues can get on the table.

The written agreement reached reflects what the parties wanted. The tenants agreed to vacate the apartment and they received extra time from the landlord to do so, and the original rent owed was cut in half. A small, but important, detail also in the agreement was a guarantee from the landlord that she would not furnish a negative reference for the tenants. The mediator explains that in a town as small as the one where this mediation took place there are very few landlords, and so “any time that a landlord and tenant can part ways on an amicable level, it helps the tenant get another apartment.” In the

mediator's opinion, had this case resulted in eviction it would have been extremely difficult for the tenants to secure another apartment in the area. Given the strained relationship between the tenants and landlord, mediation helped to provide a space for constructive dispute resolution.

Reflecting on their experience with mediation, the tenants shared: "I think it went great. I like the mediator a lot. I think the mediation was very helpful...It went well. It's definitely a good program. It's better than having to go into court." In the end, the family moved out by the agreed date into another apartment where they are "happier than where [they] were" before.

Ideally, housing mediation aims to preserve tenancy and avoid the risk of housing instability and homelessness. But, in situations where both parties want to part ways and terminate tenancy, housing mediation can play a critical role in helping tenants and landlords come to an agreement that offers a *soft landing* to the tenants, as the mediator in this case reflects: "And so I do think that mediation ultimately, even though it wasn't a preservation of tenancy, did help everyone in the end." The narrative that this case tells goes beyond a simple binary measure—*did mediation result in tenancy preservation, yes or no?*—to reveal a success story as told by both parties in their own words.

Case Study #3 – the importance of screening for legal issues

The tenants in a triple decker house were falling behind in rent because of the pandemic. The landlord, a small property owner, filed for eviction in Housing Court as a rent collection mechanism and referred her tenants to a non-profit that provides legal advice and representation to low-income individuals to file a RAFT application. Upon receiving the rental assistance from RAFT, the landlord reasoned, she would stop the eviction process and the dispute would be resolved: "As long as the tenant pay[s] rent, no problem, I'm not [going to] evict." As would soon be discovered, however, this dispute entailed more than just past unpaid rent.

The intake specialist at the non-profit flagged issues with the conditions of the unit that were raised through careful questioning during the intake process with the tenants. According to a lawyer working on this case, an ISD report determined that the landlord was in violation of various housing codes and significant repairs would need to be made to redress the inhospitable living conditions. Additionally, the landlord was operating a rooming house out of the property: fifteen unrelated individuals were living in the triple-decker without 24-hour cleaning services provided by the landlord. The housing team at the non-profit took up the case and are now providing legal representation for the tenants, one of whom participated in housing mediation both through Housing Court and then again with a Community Mediation Center. As of the writing of this evaluation, the case has yet to be resolved.

In Housing Court, the parties were compelled to participate in mediation with a housing specialist. The parties failed to reach an agreement and the case was then slated to go to trial later. The landlord then self-referred to a Community Mediation Center. The center

reached out to the tenant and lawyers at the non-profit to ask if they would consider meeting for mediation. The lawyer agreed to another mediation because she thought that finally the landlord was ready and willing to negotiate. Conversations with the mediator, lawyer for the tenant, and the landlord herself, confirm that neither party has yet to move on their positions.

This case underscores the importance of providing legal representation to low-income tenants both in court and in housing mediation. This landlord-tenant dispute is also an outlier when it comes to the legal representation of parties in eviction cases as the tenant in this case had free legal representation whereas the landlord was without it.

Generally, in eviction cases, 90% of landlords have legal representation while only 10% of tenants do (Bieretz et al., 2020). Massachusetts residential eviction cases exemplify this disparity in legal representation. Between October 2020 and June 2021: 16.1% of 20,894 plaintiffs in eviction cases were pro se while 93.8% of 26,971 defendants were pro se (Cohen, M. & Noble, 2020, May; Massachusetts Trial Court, Department of Research and Planning, 2021, June 13). Unequal access to legal representation creates a power imbalance between parties which favors landlords (Bieretz et al., 2020).

As a result of the effectiveness of legal representation in housing disputes, outcomes for tenants experiencing the eviction process are better when they have legal representation (Bieretz et al, 2020). A review of 1,502 summary process cases at three Massachusetts District Courts revealed that landlords obtained executions in 75% of adjudicated cases and 52.7% of mediated cases while tenants represented by attorneys prevented executions in 62.7% of cases. Moreover, problems with housing conditions were raised by all represented tenants unlike most mediating tenants who failed to raise such problems (Kurtzberg & Henikoff, 1997).

Indeed, “several studies demonstrate that access to legal services may improve outcomes in housing cases” (Greenberg et al., 2016, p. 138). Thus, in a randomized Massachusetts District Court study, tenant defendants who were fully represented by an attorney were less likely to lose possession of their housing and more likely to receive larger amounts of money than were tenants who had limited attorney representation (Greenberg et al., 2016). A Boston eviction study revealed that twice as many fully represented tenants (two-thirds) than unrepresented tenants (one-third) were allowed to remain in their homes (Bieretz et al, 2020, citing Boston Bar Association Task Force on the Civil Right to Counsel 2012).

Despite the evidence of its effectiveness in protecting party rights, the shortage of affordable or free legal services limits reliance on attorney representation for reducing evictions (Greenberg et al., 2016).

In this case, the legal non-profit, with its extensive experience in representing low-income tenants, was able to elicit information from the tenants about the housing conditions during the RAFT application. A consequence of power imbalance is that tenants sometimes fail to assert themselves and their rights and interests. For fear of being evicted or suffering some other form of retaliation from the landlord, tenants may

be reluctant to raise concerns about their living conditions. Tenants may even be hesitant to raise issues with their own lawyer, according to tenants' advocates (Kurtzberg & Henikoff 1997). Providing low-income tenants with experienced housing advocates and free legal representation is one important way to remediate the power imbalance even before disputes are brought to court or mediation.

The lawyer involved in this case observes that before the pandemic, "it used to be much harder to get RAFT to cover arrearages. Now with all the money that there is to preserve tenancies, there's, you know, hundreds of millions of dollars in funding to preserve tenancy. So, getting RAFT to cover arrearages is just a matter of paperwork. What happens is sometimes in a rush, I think, to preserve tenancies, some things are falling through the cracks." Coupling rental assistance with intake screenings designed to catch housing code violations and infringement of tenants' rights (with sensitivity to power imbalances and reticence of some tenants to self-assert for fear of retaliation) is critical to ensure that the goal of tenancy preservation does not outweigh efforts to advocate for tenants' rights to reside in affordable and *quality* housing.

While this case may be a success in terms of providing legal representation to low-income residents to avoid eviction and advocating for tenants' rights, nonetheless the right to an attorney is not constitutionally required for civil matters, including eviction proceedings (Hartman & Robinson, 2003). Furthermore, it also raises the question of incorporating the interests and needs of the landlords, especially small property owners who also may need legal representation. Generally, landlords are in a better situation than tenants because they own the property; however, in cases in which the landlord is a small property owner and depends upon the rent to pay the mortgage, then landlords can face the risk of foreclosure. The landlord in this case, however, did not have legal representation and claims, as a small property owner unlike a large property management company, that she does not have the financial resources to hire a lawyer. According to the lawyer for the tenant: "If there's going to be a right to counsel based on income eligibility for tenants, then it should be available for the landlord, as well." The landlord herself, when giving feedback on the Housing Mediation Program, requested that if the tenant has free legal representation, then the landlord should have representation, too.

Legal representation for the landlord, in this case, could play a critical role in reality-checking. The landlord has yet to budge on agreeing to address the housing code violations and a lawyer (or, at least legal advice) could potentially spell out for the landlord how the case will fair before a judge.

Mediation has been criticized for its focus on process at the expense of substance and its consequent inattention to the legal rights of parties, a disregard that may deprive parties who are unaware of the legal protections available to them of the opportunity to claim their rights (Kurtzberg & Henikoff, 1997). In the lawyer's opinion, this case is "better suited for court, but not because of the issues in the case, but because...the landlord just isn't willing to do repairs. She's been cited by ISD multiple times." Mediation is voluntary and the parties are free to reach an agreement, or not. Now, it seems that the parties are unable to reach an agreement. The landlord expressed feeling personally disrespected by the lawyer. She feels entitled to the RAFT money and seems only

preoccupied with the rent money: “As long as the tenant pay rent, no problem, I’m not evict.” The landlord appears to perceive the lawyer’s intervention as a personal attack (“She did all the thing: the thing is only targeting me, not protect the tenant”) and not serving the interest of the tenant (“The attorney do much more than tenant expectation”). The mediator confirmed that if the parties were to try mediation again “the mindset would have to be very different”.

The potential for mediation to help the parties resolve their dispute remains, however. The landlord sought out mediation on her own, after all. If the case does go before a judge, the tenant may win, but the process will be slowed by the protocols and delays characteristic of the judicial system.

This case highlights several themes relevant to the HMP: The importance of providing free legal representation to low-income tenants; the argument for providing free legal representation to landlords based on income criteria; the need to couple RAFT with rigorous screening to ensure that preserving tenancy does not neglect tenants’ rights to living in quality housing; and the case for continuing to mandate case conference in housing (and district) court.

Case Study #4 – financial assistance programs and housing mediation: “a great combination”

In the case of L, a tenant, the combination of housing mediation and financial assistance through RAFT helped her to preserve tenancy and put her relationship with her landlord on a better footing than it had been during the pandemic. The tenant shared an apartment with another roommate with whom she had been romantically involved. She ended the relationship, but they continued to live together. Only L’s name was on the lease. During the pandemic, she sustained a back injury and was unable to work. By L’s account, the roommate did not (or was unable) to pay his portion of rent, and by the time she had received a letter to appear in court, she was behind in rent by eight months and owed over eight thousand dollars.

By her own initiative, L contacted a local legal aid agency to receive free legal advice about her housing crisis. L wanted to fight the eviction and, as she said, “I’ve always known that tenants have rights and they have choices and they have options.” She also reached out to friends about her situation, and they told her that she could go to a Housing Consumer Education Center (HCEC) to apply for financial assistance through RAFT. While L was seeking counseling and resources to stay in her apartment, she communicated best she could with her landlord and tried to work with him on, as she put it, the “only thing we have in common, the organization processing the paperwork” to receive financial assistance to cover the back rent she owed.

The mediator who would eventually get involved in mediating the housing dispute between these two parties reflected on how the financial assistance serves as a “sort of pressure on them [i.e. landlords and tenants] to sit down and find a solution.” In some cases, especially when both parties are sympathetic to one another’s situation and want to

preserve tenancy, the mediators help to facilitate creative problem-solving among the parties. For example, the landlord may agree to waive the remaining amount of back rent owed not covered by RAFT or the tenant may offer to do extra work on the property. The mediators then help the parties to put their agreement into writing and engage in reality-testing to ensure that the mediated agreement is realistic for both parties. In other cases, however, communication may have broken down between the parties and tensions run high, and so the mediators help the parties to clarify misunderstandings and focus on what is important to them, as another mediator recounted: “[Sometimes] the landlord doesn’t want to sign the document or the amount that the tenant owes is higher than what they are going to [receive] from RAFT, so they need to agree before having the funds.” Mediation, then, in the mediator’s opinion, has “proved to be very important to them [i.e. landlords and tenants] and to the [EDI] program.”

In L’s case, the landlord wanted the RAFT assistance to cover back rent owed but was also pursuing eviction. There was also confusion about how much assistance the landlord had already collected, which led to assertions by the landlord that the tenant still owed additional money to get caught up with rent. The HCEC processing the RAFT application referred the parties to a Community Mediation Center for housing mediation, a top priority referral under the EDI program.

The mediators involved in this case recounted that tension was high between the parties. On the matter of how much rental assistance had already been received by the landlord and how much more the tenant owed, the tenant felt that the landlord was being untruthful. The mediators asked clarifying questions and established the correct amount received and confirmed that an additional payment from a rental assistance agency was in the pipeline. The written agreement reflects this and the mediators, in retrospect, saw this case as one in which the question of “how the money was going to be repaid was kind of settled.” However, the mediators noticed that “there was still some tension going on” and the parties needed to negotiate other issues important to them besides the money.

The tenant shared that the mediators “did actually iron out an issue with my gardening.” The landlord did not want the tenant to have her potted plants on the porch, complaining that she was dirtying up the porch by gardening there. For the tenant, being able to garden was important to her and she was not willing to give up her plants. The matter had been ongoing, fueling the tension between the parties, as the tenant put it: “He and I had a big argument about my plants when I had planted them.” The mediators asked open-endedly of the parties, “Can you think of any other way to solve this where the plants will not be on the porch?” The landlord proposed transporting the plants from the porch to the right side of the house, to which the tenant agreed. “And we put this in the agreement,” the mediators recounted, “so that helped, but you couldn’t do that in front of a judge...but we were able to facilitate that which took away a lot of the hostility.”

In the end, L continues to live in her apartment and although the relationship between her and the landlord may not be completely smoothed over, the tenant is caught up with rent and tends to her plants on the right side of the house. Satisfied with the housing mediation, L shared: “...it was pretty pleasant, you know, and it was pretty smooth and the workers that work for the organization they were very nice and explained things, you

know, clear and well and they were totally, you know, unbiased, you know, and if anything that was said was not the correct thing to say they had to explain.” She continued: “They were wonderful people, you know, it’s a very well needed and great program, you know, that’s actually, you know, there to assist the people like the tenants and landlords that need it.” On the link between housing mediation and preservation of tenancy, the tenant expressed feeling that the combination of housing mediation and financial assistance helped her to preserve tenancy: “...with the RAFT and with the combination of RAFT referring me to [mediation]...so yes, I mean with their help, with the two offices working together, you know, it really is, you know a great combination. It’s a very good team, you know the both of them.”

Case Study #5 – regaining hope in a seemingly hopeless situation

“We’re not all in the same boat, but we’re all in the same storm,” is how one mediator described the global pandemic’s impact on landlords and tenants. D, a homeowner who rented out part of his house to a tenant, could have argued that he and the tenant were very much in the same boat, in the same storm. And, fortunately, both landlord and tenant were able to recognize and empathize with one another’s misfortune. D shared the situation that he and his tenant found themselves in during the pandemic:

“So I had a thing with my tenant where, I mean, granted, my tenant had, was dealing with so many other, you know, financial issues, along with legal issues like child support and stuff like that, and, you know, [he] lost his job and, you know, from there on, he just was like surviving off the government assistance, I guess, I’m assuming [it] must have been unemployment. You know, I was on it for a little while too, but [for] a couple of months, a few months because of the lockdown and [...] the money I had in my savings are pretty much drained [...] So, you know, I’m living everyday, day by day, paycheck to paycheck. It’s just like I’m barely getting by and I’m pretty much drained most of my savings”

According to D, he and his tenant had a good relationship with open lines of communication. D did not want to see his tenant go, but they both understood that without the rent payments D would not be able to pay his mortgage. Both D and his tenant were grappling with the potential risk of losing the roof over their heads. They came together on their own to see how they could resolve their situation. D needed home repairs but did not have the financial resources to pay for them; the tenant was an experienced carpenter and offered to work on the house free of charge. They both then went to a Housing Consumer and Education Center to apply for RAFT. The tenant was behind in rent by eight months and owed \$12,000 in rent. When D was told that he would receive at most \$10,000 in assistance, he promptly waived the remaining \$2,000, an immense relief for the tenant.

Though D and his tenant appeared to have a positive relationship and were willing to work together to find the means to preserve tenancy, the HCEC referred them to housing mediation and Both D and his tenant agreed to participate. D recounted that he saw mediation as a preventive measure to reinforce the strong foundation that he and his

tenant already had so that they would be equipped with the tools to weather any future disputes: “So they [the HCEC] said that we would have to go into mediation so that there's no, you know, there's no misunderstanding in the long run, where I don't have to chase him down, you know, bring them to court because he couldn't afford, you know, with the rent payment.” The language in the mediated agreement reflects all the solutions that D and his tenant came up with prior to mediation.

A mediator at another Community Mediation Center not involved in this case, observed that housing mediation helps to bring landlords and tenants together, even during the period of the eviction moratorium and RAFT assistance, to keep channels of communication open so that when the moratorium is lifted and the financial assistance runs out, the landlord does not rush to evict the tenant. In the case of D and his tenant, the agreement they reached through mediation put down in writing their commitment to preserve tenancy and to “to seek mediation if they have any future conflicts.”

D valued the mediation also as a way of regaining hope in a seemingly hopeless situation and not feeling alone with all the negative emotions associated with the stress of possibly losing a home:

“They gave me a much better understanding that, you know, that there is, there was some type of hope.....During the pandemic, you know, just going through the channels of emotions, of dealing with financial burdens, not just for me, for my tenant as well, and just knowing that, you know, he was able to get some help, anything that would help, you know, keep up, keep me from losing my property, kind of helped out a lot, so my experience with it in the mediation, it went over pretty well.”

Coupled with the financial assistance, D felt immense relief from the services provided to him and his tenant through the EDI: “I really don't know where I probably would have been if, you know, I didn't hear about the program.”

Appendix E: Evaluation Methodology

The aim of this formative evaluation is to examine the implementation and effectiveness of the state-funded Housing Mediation Program (HMP) through an explicit study of the complexity of the HMP, its impact on users (mediation parties), experts (mediators/Community Mediation Centers) as well as reflections and learning of program administrators through the systematic collection and analysis of data and to measure effectiveness based on indicators developed in consultation with state sponsors.

This evaluation sets out to answer four research questions overtime:

1. Is MOPC and its community mediation partners implementing a well-designed, “satisfactory” and sustainable Housing Mediation Program?
2. Is the Housing Mediation Program resolving landlord-tenant disputes in ways that is helping to preserve tenancy and/or generating alternative solutions or other benefits to landlords and/or tenants that is helping to ease pandemic-induced eviction/landlord-tenant disputes?
3. Is the Housing Mediation Program resolving landlord-tenant disputes in ways that is helping to preserve tenancy and/or generating alternative solutions or other benefits to landlords and/or tenants that is helping to ease pandemic-induced eviction/landlord-tenant disputes?
4. What are the cost benefits of mediation/increasing access and utilization of mediation/community mediation in landlord-tenant/housing mediation?

To answer these questions, data was collected through the following methods:

- Post-mediation participant surveys
- Mediator surveys
- Semi-structured interviews with housing mediation participants (i.e., tenants, landlords/property managers, and lawyers)
- Semi-structured interviews with mediators and case coordinators
- Observation of the FY21 Housing Mediation Program debriefing with DHCD, MOPC, and representatives of CMCs.

A mixed-methods approach was utilized, combining quantitative and qualitative analysis of the data collected, to measure effectiveness according to particular indicators (e.g., number of mediations resulting in tenancy preservation) and to provide an in-depth analysis of the multiple factors impacting the success of the HMP. For example, evaluators analyzed mediated agreements and intake forms provided by CMCs to measure the percentage of mediated agreements resulting in tenancy preservation and conducted a qualitative analysis of the language in these documents to identify elements in the agreements that led to tenancy preservation or, in cases where tenancy was not preserved, identify elements in the agreements that created a soft-landing for the tenants.

Another methodology used for this evaluation is the use of case studies. Case studies provide a rich, detailed narrative description of the Housing Mediation Program, relying on information gathered from the following data sources: referral forms to Community

Mediation Centers, HMP screening and intake forms, mediated agreements, participant surveys and interviews. These case studies are part of an evaluation that MOPC conducted to study the value of the HMP as part of the Eviction Diversion Initiative. The Community Mediation Centers provided the referral forms, the screening and intake forms, and the mediated agreements. These documents yielded relevant information pertaining to the nature of parties' disputes and COVID-related housing crises. Surveys conducted at the conclusion of mediation sessions gleaned participants' level of satisfaction with the HMP and collected their feedback and comments.

The post-mediation participant survey also asked participants if they would be willing to talk with a researcher/evaluator about their mediation experience. The researcher/evaluator then contacted the participant by phone within a 4–10-week period after the mediation session to conduct a semi-structured interview.

There were a total of 47 respondents to the post-mediation party survey. Of those, 27, over half of respondents (57%) indicated that they would be willing to talk about their mediation experience with a researcher/evaluator. The researcher/evaluator(s) reached 20 of the 27 respondents by phone and was able to conduct 16 interviews (7 tenants, 5 landlords, 3 lawyers representing landlords, and 1 lawyer representing tenants). Multiple attempts were made to reach participants if they did not respond to a cold call the first time. In some cases, respondents answered the phone, but declined to participate or said that they were not available. In one case, a tenant picked up the phone and said that she was in the middle of a housing crisis. She had left her apartment and was trying to get into a shelter but needed a copy of her lease. She was in no position to participate in an interview. The researcher/evaluator asked her permission to pass along her information to a contact at DHCD to see if any additional assistance or referrals could be made on her behalf.

In addition to party interviews, the evaluator/researcher also interviewed mediators who mediate cases through the HMP. To date, 6 interviews with either one or two mediators from 6 of the 12 CMCs across the state were conducted. To recruit mediators for the evaluation, the researcher/evaluators contacted the directors of CMCs to inquire about setting up interviews with mediators.

To make comparisons across cases, the researcher/evaluator asked participants the same questions, while also allowing for flexibility by asking questions based on the direction of the participants' responses and the specifics of the case. The researcher/evaluator devised and carried out a research/evaluation plan approved by the Institutional Review Board at UMass Boston and took all steps to minimize the risk of compromising participants' confidentiality.

By providing an in-depth account of specific cases drawn directly from the experiences of participants (i.e., tenants, landlords, mediators, and lawyers), the case studies complement the quantitative data and statistical analysis by highlighting the voices and experiences of individuals directly impacted by COVID-related housing crises and who benefited from the HMP and related EDI-services. Some of the case studies incorporate findings from the housing literature to contextualize observations made in specific housing mediations. The case studies also add value by offering a means to examine hypotheses about correlations between housing mediation and the preservation of tenancy

and housing stability within the context of individual cases. Not every case study presented, however, results in the preservation of tenancy; rather, agreements reached between the landlord and tenant may reflect a mutual desire for the tenant to move out of the property. By interviewing the parties, the researcher/evaluator can pick up the story where the written agreement left off to learn how the parties are faring and how mediation may have helped to create a soft landing for the tenants—that is, the means with which to move out and into another property that suits their needs and meets their interests.

APPENDIX F: Analysis of Responses from HMP Party & Mediator Surveys

This following section provides an analysis of responses from two surveys administered as part of the evaluation of the HMP: a party survey administered to parties (i.e., tenants, landlords, and lawyers) who participated in a housing mediation session and a general mediator survey administered to Community Mediation Center mediators who offer housing mediation services.

Data analysis of FY 2021 HMP Party Survey

Q1. Centers and mediation participants:

Based on mediation case number identifications, 37 surveyed respondents participated in housing mediations from eight Community Mediation Centers under the auspices of the Housing Mediation Program (HMP). The largest contingent of the participants -- i.e., 13 participants -- used services provided by the center, MWMS.

CAPE MEDIATION: 3
METROWEST: 13
MMS: 6
MSI: 1
NORTH SHORE: 2
MCC: 2
MARTHA'S VINEYARD: 6
BERKSHIRE: 4
Unknown: 10

Q2. Description of parties:

The number of tenants and landlords/property managers completing the survey were roughly equivalent. Out of the 40 respondents, 16 (xx%) were tenants and 14 (xx%) were landlords/property managers. One-fourth (25% or ten) of the respondents were lawyers, with most (eight out of ten lawyers) representing the landlord side. Two of the ten lawyers represented tenants.

Q3. Clarity of information about mediation:

The 47 surveyed individuals were unanimous about the clarity of the information they received about mediation.

Q4 & Q5. Awareness of legal rights at mediation:

Nearly all respondents (39 or 98% of 40) claimed to be aware of their legal rights when mediating. A somewhat smaller but still very large proportion of responding individuals (35 or 95% of 37) professed awareness of the other party's legal rights.

Q6. Receipt of housing counseling and financial assistance information:

Close to two-thirds (64%) of the 47 respondents acknowledged receiving housing counseling or information about financial assistance. The remaining 36% of respondents were not recipients of such services.

Q7. Mediator assistance:

Most of the 47 surveyed individuals were pleased with the assistance they received from mediators. Mediators' listening skills were acknowledged by an overwhelming majority of the respondents (91% of 43). Large majorities also appreciated mediators' help with identifying and clarifying issues (83%), enabling parties to voice concerns and make their own decisions (83%), and with generating ideas and options (70%). Smaller majorities recognized that mediators assisted with generating new information and helped parties be open to alternative solutions (51% and 60%, respectively). Parties expressly praised mediators for such things as their ability to encourage productive discussion: "Help facilitate good dialogue" and "They were able to move the process along as efficiently as possible"; for their patience and tact: "They had a lot of patience and tact to resolve issues"; and for their listening skills: they "validated and summarized concerns in a way that communicated understanding."

Q8. Process satisfaction:

Respondents overwhelmingly approved of the mediation services they received. The problems of the surveyed individuals were handled to the satisfaction of 93% of the 47 respondents. Ninety-eight percent indicated that the mediation process was fair to them. And 88% were satisfied with the outcome.

Q9. Comments about mediation experience:

All but two of the respondents had positive things to say about either the mediation process or the mediators. The following sample of comments typify respondents' reactions to the mediators:

"[Mediator's name] did a great job and kept us up to date and informed the entire process."

"Mediator was great at understanding."

"The mediator, [mediator's name] was very helpful and accommodating. Her assistance exceeded my expectations."

"[Mediator's name] works hard to provide information about housing assistance and help to contact the housing assistance programs. [Mediator's name] provide a bridge between the tenant and me during the case management. Her excellent work help solved the issue and to avoid the eviction judgement."

“The mediators were very kind and understanding.”

Approval of the mediation process was widespread. For example,

“Overall very happy with the process, and also the mediators' knowledge of some of the resources that are available for tenants.”

“It was a very informative meeting moving forward on the payments during this pandemic.”

“Overall please with the process, mediator very helpful in bringing this matter to closure.”

“Today's mediation was very productive and when all was said and done we had an agreement that was satisfactory to both parties.”

“It helped with a better understanding of the hardship that's been effecting us.”

“This is great service”

One person was ready to recommend mediation to others:

“I have other summary process matters pending with the Court and will advise the clients to pursue mediation to resolve the dispute.”

A person who left mediation dissatisfied blamed the other party rather than the mediation process:

“It was an impossible mediation from the start. Both parties were very far apart from one another and the landlord was ultimately unwilling to make any steps forward. We had a much more pleasant experience than Housing Specialist conferences in court in the past, but there wasn't room for progress once we discovered that the landlord wouldn't make any repairs unless the arrears were fully covered.”

And two respondents were neutral, with one writing “N/a” and the second observing that he/she “Wasn't expecting it, it threw me off.”

Q10. Housing counseling and financial assistance information:

Respondents were equally divided between those who found the housing counseling and financial assistance received useful during mediation (49% of 37 respondents) and those who failed to receive housing counseling or information about financial assistance (49% of 37 respondents). A single respondent did not consider either the counseling or financial assistance of use in mediation.

Q11. Legal advice or representation:

A sizable proportion of 47 respondents (over two-thirds or 68%) did not obtain legal advice or representation during mediation. Nearly one-third of respondents (32%) did receive such legal assistance.

Data analysis of FY 2021 General Mediator Survey Responses

Q1 & Q2: Intro

The Housing Mediation Program (HMP) was set up in 2020 to contribute to the state’s overarching goal of achieving housing stabilization by providing mediation services from participating Community Mediation Centers (CMCs) to parties embroiled in housing disputes. To evaluate the extent of HMP’s impact on housing stability, the mediators’ perceptions of developments in HMP mediations were sought. Accordingly, mediator participants in the HMP were invited to complete a survey that inquired into the responding mediator’s general experience with the HMP, such as the kinds of housing issues addressed in mediation and the attendant outcomes, the contrasts between housing mediation and mediation of other types of disputes, and the role of mediator diversity in Centers’ HMP practices. When survey questions asked for the mediator’s assessment of the incidence of some matter, respondents were informed that the available choices were “often,” which meant more than half the mediations, “sometimes,” which meant less than half to 10% of mediations, and “rarely,” which meant under 10% of mediations. In this analysis “often” was used interchangeably with “frequent” or “frequently” as was “sometimes” with “occasional” or “occasionally.”

Mediator survey participants were recruited by their respective Centers at the request of the MOPC Associate Director.⁷ Thirty-three mediators from nine Centers volunteered to complete the survey. MetroWest was the most heavily represented center in the survey, with eight mediator respondents, followed by Cape Mediation (aka CCDRC) with six responding mediator respondents, and by CDSC and MVMP, each represented by five

⁷ An email was sent by the Associate Director to centers asking them to invite at least two of their most experienced mediators to participate in this survey, to wit:

“Dear _____

As part of the evaluation of the Housing Mediation Program (HMP) that MOPC is conducting, a team of researchers from our office at UMass Boston have been interviewing tenants, landlords/property managers, and lawyers to hear their experiences and gather their feedback on several mediated cases. We would also greatly value the perspectives and input of preferably two of your most experienced HMP mediators, as it would shed more light on the impact of mediation on housing stability from their perspective. We are hoping that you will help us recruit two mediators from your center, and that they would consent to the interview.

Please reply to this email indicating who you would like us to interview along with their name and contact information. The information they share will not be shared in ways that identifies them as the source. There is also no foreseeable risk (no foreseeable physical, psychological, economic, or legal risks) to them in participating in this interview.

Thanks,”

mediators. One surveyed mediator was affiliated with four Centers: (MCC, CDSC, MWMS, and Cape Mediation).

Overall, the experience of surveyed mediators with mediating housing disputes varied. Thirteen mediators had a history of conducting ten or more housing mediations, while twenty mediators held fewer than ten such mediations. Together, the respondents conducted at least 575 housing mediations during their mediation careers, averaging 19 mediations and ranging from one to 200 housing mediations.⁸

Q3 & Q4: Issues raised in housing mediations

Rent arrears were the most common stated reason for residential eviction filings across the country and in Massachusetts. The problem of rent arrears was also the issue that was most frequently raised in HMP mediations according to a large proportion of surveyed mediators (85% of 33 survey respondents). In contrast, the number of mediators who identified tenant removals from premises as a predominant HMP mediation issue (18% of respondents) were many fewer than the rent arrearage numbers. Even smaller numbers of surveyed mediators (between 4 and 5 or between 12% and 15% of 33) reported that matters concerning repairs, lease expiration, and occupant behavior were the most frequent mediation topics. The least frequently raised mediation issue reported by two-thirds of surveyed mediators (67% of 33) concerned premise overcrowding.

Q5, Q6 & Q9: Mediation agreements reached

Agreements were a frequent outcome of HMP housing mediation according to two-thirds or 67% of mediators and an occasional outcome for another 30% of mediators. Housing mediation agreements were rare only for a single mediator. Otherwise, the failure to ever achieve a housing mediation agreement was foreign to the mediators' HMP experience.

As for housing issues that were resolved through mediation: mediators overwhelmingly agreed (88% of 33) that rent arrears, the most prevalent mediation issue, was also the issue most often resolved through mediation. Settlements of the problem of tenant removal from premises were the most frequent mediation outcome according to a small minority of nearly one-fourth of mediators (i.e., 27%) Two mediators cited agreements about the date when the tenant would vacate the premises. Issues involving rent arrears, repairs, lease expiration, rent increases, rent amount, tenant's care for premises, occupant's behavior, and overcrowding were identified by even smaller minorities (between 9% and 0%) as the least frequently solved housing issues.

Q7 & Q8: party communication & conflict

⁸ These numbers are on the conservative side. When mediators reported the quantity of their housing mediations as a range, the lower number was used in these calculations. Qualitative tallies of housing mediations by mediators – e.g., “over 17 years, many” or “dozens, but only a couple since Covid” – were excluded from these calculations.

Most mediators found that party interactions, such as communication and conflict, often improved due to housing mediation. Over three-fourths of mediators observed better communication and reduced conflict between mediating parties to be frequent (76% and 79% of 33 responding mediators, respectively). In the experience of a small minority of 15% of mediators, such party interactions were usually unchanged. On the other hand, two mediators (6%) observed that parties' communication often deteriorated because of mediation. No mediators reported frequent escalation of party conflict arising from mediation.

Q10-Q15: How were issues handled/addressed in mediation?

The connection between housing mediation and the frequency of rent arrearage and eviction developments was addressed by nearly all – i.e., at least 30 out of 33 – responding mediators. In contrast, substantially fewer surveyed mediators – from 20 to 25 – responded to questions about the prevalence of mediation outcomes regarding repairs, the tenant's upkeep of premises, premise occupant behavior, and premise overcrowding.

Q10: Rent arrears:

The issue of rent arrears was usually settled through payment. Whether the agreed-upon payments for unpaid rent were complete, partial, or conditional, the proportion of mediators who reported that payments were occasionally involved outweighed the proportion of mediators reporting frequent payments. Thus, out of 30 surveyed mediators who indicated that full payments were at issue, 47% reported the occasional involvement of full payments while a lower percentage of 33% indicated their frequent involvement. Similarly, partial payments were involved sometimes according to 58% of 31 mediators and often according to 26%. Payments with conditions were noted by mediators as either occurring sometimes (37% of 30) or often (33%).

Q12: tenant removal-

Nearly all – between 30 and 31 – surveyed mediators provided information about the frequency of the different ways that tenant evictions were addressed during their housing mediations. Eviction developments that ranged from the initiation of the process to its inhibition were produced at housing mediations according to impressively large majorities of at least 80% of a minimum of 31 mediators. Evictions were initiated during housing mediations often (45%), sometimes (35%) or rarely (13%) according to 93% of 31 mediators. All 30 mediators found that evictions were prevented during mediations either often (47%), sometimes (50%) or rarely (3%). Ninety percent of 31 mediators noted that a conditional halt to eviction was achieved in mediation frequently (29%), occasionally (55%), or rarely (6%). Delays in the eviction date were accomplished according to 93% of 31 mediators often (48%), sometimes (35%), or rarely (10%). Finally, 86% of 31 respondents observed that tenant pre-mediation departures from their premises were frequent (3%), occasional (35%) or rare (48%). Only a single mediator indicated that such tenant departures were a frequent feature of his/her mediations.

Q11: Repairs:

Questions about the mediation fate of the repair issue elicited responses from nearly one-third fewer surveyed mediators (between 21 and 24 mediators). Two mediators explained that the issue of repairs did not arise during their housing mediations: “None of the cases I mediated had repairs as an issue” and the “issue [was] not dealt with in my experience.” Actual waiver of the repair issue by the tenant was rarely (43%) or never (38%) observed by a decisive majority of 81% of 21 responding mediators. Nevertheless, majorities of the mediators attested to the infrequency of fixing repairs as a mediation issue and to the frequency with which repairs were effectively a non-issue. Accordingly, full or partial repairs were sometimes or rarely provided for at the mediations of most surveyed mediators (68% of 23 and 63% of 22, respectively). Moreover, agreements never hinged upon repairs as per a plurality of 38% of 24 responding mediators. Another 33% of mediators indicated that repairs were rarely a condition of agreements. As for the non-issue status of repairs, for most mediators, the issue of repairs was often not raised (52% of 23 respondents) or not applicable (67% of 21 respondents) at mediations.

Q13. Tenant upkeep:

For most mediators the upkeep of premises was either inapplicable or overlooked during mediation. Sixty percent of 20 responding mediators found that tenant upkeep of premises was frequently inapplicable at mediation. Fully 72% of 22 responding mediators indicated that the upkeep issue was relevant but unaddressed by mediation either sometimes (36%) or rarely (36%). Premise damage as ordinary wear and tear was rarely a mediation consideration per a plurality of 40% of 25 respondents. Responsibility for damage repair by the tenant or the landlord was sometimes or rarely a mediation matter according to pluralities of mediators. Tenants’ agreement to make repairs rarely occurred during mediation as reported by a plurality of 48% of 23 mediators. A plurality of 41% of 22 mediators indicated that landlords sometimes agreed to fix damages.

Q14: occupant behavior:

Occupant behavior was often not an applicable issue at mediations according to a majority of 59% of 17 responding mediators. A plurality of 38% of 24 mediators noted that occupant behavior was sometimes relevant yet remained unaddressed during housing mediation. Another plurality of 43% of 23 mediators reported that sometimes complaints about occupant behavior was found to be unwarranted. Changes in occupant actions attributable to mediation was at most occasional: 44% of 25 mediators indicated that sometimes the occupant causing the complaint left the premises, and 76% of 24 mediators noted that the occupant’s behavior changed either occasionally or rarely (38% for each option).

Q15: overcrowding:

The issue of overcrowding was inapplicable to the housing mediations of a majority of 71% of 24 surveyed mediators. As noted by a plurality of 44% of 16 respondents, the overcrowding issue was frequently settled by determining that all the occupants of the

premises were authorized. The departure of an unauthorized occupant was never agreed according to a plurality of 42% of 19 mediators.

Q16-Q20: Comparison between housing and other mediations:

Mediators were asked to compare housing mediation with mediation of other types of disputes. From the mediator's perspective, the mediation of housing disputes presented more demands in certain respects than did mediation of other disputes. As one mediator pointed out, "these are challenging and sometimes heart-breaking mediations but I think mediators can really make a difference [b]y giving both sides a chance to vent and work together."

Parties' circumstances reportedly presented greater challenges for the mediation of housing issues than for other types of issues. The stakes for parties, the frequency and extent of the imbalance of power between parties, and the importance of party knowledge about their rights and defenses were all greater in housing mediation than for other mediated issues according to majorities of 55%-79% of 33 mediators. Referrals of parties to sources of information about rights and defenses were reported by 64% of mediators as more frequent at HMP mediations than others. The organizational structure of housing mediation under the HMP was reported by most mediators to be distinguishable from other mediations by increases in both the involvement of other agencies and the call for documentation and reporting to agencies (as per 61% and 70% of 33 mediators, respectively).

On the other hand, certain features were common to the mediation of housing and other disputes. Thus, most mediators considered that limited party proficiency in English (61% of 33) and the need for a translator during mediation (66% of 32) did not consistently differentiate housing mediation from other types of mediated disputes. Similarly, the intensity of party discussions during housing mediations were comparable to those in other mediations. And while a plurality of 41% of 32 mediators considered that agreements were achieved more often in housing mediation, 34% of the mediators regarded the frequency of agreements as about the same for housing mediations as for other mediations. As one mediator found, in HMP mediations "the parties are eager to work together to find a workable resolution."

Housing issues are what define housing mediation. One mediator cautioned against ignoring the complicated nature of housing issues, pointing out that the different locations of the housing dispute had dissimilar implications for housing mediation:

"Housing mediation manifests itself very differently from location to location. In areas of lower socio-economic status landlords tend to be individuals with often lesser experience with the court and knowledge of the legal system. In areas of higher socio-economic status, the landlords are often represented by legal counsel, this also applies to larger housing complexes as compared to multiunit houses. It is extremely difficult for me to qualify "housing mediation" as a single issue at this moment when different locations have such drastic differences."

It may well be that the complexity of housing issues is another distinctive feature of housing mediation.

Q21 & Q22: mediator diversity & assignment factors:

Diversity in the mediator workforce may expand the expertise and experience available to people who need assistance in resolving their disputes. With respect to such characteristics as racial/ethnic origin, socio-economic class, multiple language proficiency, and gender, gender was the sole feature of the housing mediator pool that most mediators (52% of 33) thought mirrored the population to be served. Otherwise, majorities of the surveyed mediators were under the impression that the general pool of housing mediators failed to reflect the race/ethnicity and socio-economic class of that population (as per 59% of 32 and 61% of 33 surveyed mediators, respectively). Along the same lines, a plurality of mediators (47% of 32) did not think that the multiple language proficiency of mediators reflected that of the relevant population. However, sizable minorities of the mediators – from 33% of 33 to 44% of 32 mediators – indicated that they didn't know about the connection between the mediator pool and the population served with respect to each of the four characteristics.

Few if any (between, in fact, one and none) of the surveyed mediators thought that the actual practice of assigning mediators to cases usually involved factors like race/ethnicity, socio-economic class, multiple language proficiency, or gender.⁹ Rather, the impression held by a sizable majority of 61% of 33 responding mediators was that mediator availability was commonly considered in mediators' case assignments. Another 24% of mediators believed that mediator experience was regularly considered when assigning mediators to cases. Only one mediator disclaimed knowledge about the matter.

Data analysis of mediator session survey responses

Q1 & Q2:

Through their survey responses, mediators from two Centers provided their insights about the housing mediation sessions that were held in seven cases under HMP auspices. Six of the sessions were conducted by mediators from Martha's Vineyard Mediation Program while a mediator from the Greater Brockton Center for Dispute Resolution conducted the seventh session.

Q3:

In three of the cases, the premises were occupied under a rental lease. The remaining four cases involved tenancies-at-will.

Q4 & Q5:

⁹ Two respondents complained that they were unable to choose more than one option as a mediator assignment factor. One of the mediators wanted to select the three factors of experience, availability, and language proficiency. This flaw will be corrected in the next iteration of this survey.

All the parties were proficient in English so there was no need for interpretation during mediation.

Q6:

The threat of eviction and rent arrears brought nearly all the parties to mediation. Six (or 86% of seven) mediation sessions involved rent arrears and the threat of eviction loomed over five (or 71% of seven) sessions. Other housing issues accounted for the disputes in single mediation sessions (14% of seven). Besides eviction and rent arrears, problems with overcrowding, property damage, the need for repairs, increased rent, and unpaid mortgages were also involved in one session. The housing dispute in a second session was occasioned by the sale of the property and a bad tenant-landlord relationship.

Q7-Q14: The role of legal information during the mediation session:

To the extent that legal housing information had a role during mediation, mediators were uninvolved with communicating such information to parties. Four tenants (57% of seven) and five landlords (71% of seven) obtained legal information before participating in mediation. In two sessions (29% of seven), neither party had received such information. The types of information acquired in five cases included information about court procedures (one case), the rights and responsibilities of tenants and landlords (two cases), the right to file for RAFT assistance (one case), and eviction, court processes and rights and responsibilities (one case). Housing rights/defenses were raised by tenants during three mediation sessions (43%) but not in the remaining four (57%). The need for additional information about legal housing rights/defenses became evident in a single session when a party invoked their legal housing rights/defenses during the mediation (according to one of five respondents). Nevertheless, except for one respondent's denial about making referrals for legal housing information, the surveyed mediators were unresponsive to questions about such referrals.

Q15-Q16: Mediation's impact on parties' relationship:

During their mediation session, parties' interactions with one another mostly improved or, to a lesser extent, stayed the same. At the sessions, communication between parties were better according to four mediators (57% of seven) or the same according to three mediators (43% of seven). The improvement in party conflict was widespread. Although one mediator (14% of seven) reported that party conflict was unchanged during mediation, six mediators (86% of seven) found that conflict between parties was less during mediation. At no session did mediators observe party communication and conflict to worsen or even be inapplicable.

Q16: Mediation outcome - agreement:

Surveyed mediators were unanimous that the discussion of the issues at mediation produced final agreements.

Q17-Q24: Mediation outcomes that were omitted from the mediated agreement:

Overall, outcomes that were not included in the mediation agreement were frequently designated as inapplicable by the surveyed mediators. Taking care of issues related to

repairs by the landlord, occupant behavior, tenant upkeep of premises, and tenant's departure from premises, that were not incorporated into the mediation agreement, were each regarded as inapplicable at five sessions (71% of seven). Mediators considered that occupancy numbers did not apply at six sessions (86%). And adjustments to the rent amount or to rent arrears were each deemed inapplicable by mediators at three sessions (43%).

Four issues were characterized by a few mediators as relevant but unaddressed in mediation, including landlord repairs and premise upkeep by the tenant (each identified by two or 29% of respondents), and occupant behavior and occupancy numbers (each identified by the mediator at one or 14% of sessions).

Single instances of changes to rent arrears, occupant behavior, rent amounts, and eviction-related tenant departures were accomplished outside the agreement. Partial payment of rent arrears was made by one tenant, an occupant causing complaints agreed to leave the dwelling, the amount of rent for the premises was reduced, and eviction continued in one case, was discontinued in another case, and was delayed in a third case.

Q.25: Mediation problem-solving:

At nearly all sessions, both parties contributed to solving their housing dispute. Ideas for solutions were provided by tenants (according to six or 86% of seven responding mediators) and by landlords (according to seven or 100% of mediators). One mediator (14%) also claimed credit for problem-solving.

Q.26: Consequences of mediation for tenant's situation according to responding mediators:

For the most part, mediation led to tenants at five sessions remaining in their dwelling (71% of seven). Homelessness was averted for tenants at three sessions (43%). A housing search was avoided and complaints were addressed for tenants in two sessions.

Q.27: Consequences of mediation for landlord's situation according to responding mediators:

The complaints of most landlords (four or 57% of seven) were addressed in mediation. The original tenancy was stabilized and the search for new tenants was each avoided for two landlords (29%), and the costs of eviction and a tenant search was averted for one landlord (14%).

Q.28-29: Mediator demographics:

A large majority of the surveyed mediators identified as female (five or 71% of seven), white (six or 86%), and Brazilian/Portuguese (four or 57%). Four respondents claimed proficiency in Portuguese.

Q.30: Factors influencing choice of mediator for housing case:

Mediators were unanimous that the availability and experience of the mediator were the key factors in selecting a mediator for a housing mediation. Otherwise, the mediator's

proficiency in another language and racial/ethnic origin were also considered influences by two or fewer mediators, respectively.

Questions regarding mediator selection with respect to the interaction between characteristics of the mediator (e.g., experience, gender, socio-economic class, race/ethnic origin) and characteristics of parties (e.g., gender, socio-economic class, race/ethnic origin, etc.) or other considerations (e.g., equal opportunity to mediate, case difficulty, etc.) elicited no responses from the surveyed mediators.

Appendix G: Housing Mediation Program Logical Framework

<i>Activity</i>	<i>Inputs</i>	<i>Indicators of Success</i>	Outputs	Outcomes	Source of Information MOV
<ul style="list-style-type: none"> • 1a. <u>State-level mediation program administration:</u> Ensure programmatic and administrative best practices for housing mediation program operations, public accountability and alignment with state policies through administration and oversight of the Housing Mediation Program by MOPC (the state dispute 	<ul style="list-style-type: none"> • ISA and investment of \$2,215,000, including funding for new staff hires, database modifications and monitoring and evaluation. • Experienced program managers from MOPC leading program design and overseeing implementation. • Experienced evaluators 	<ul style="list-style-type: none"> • Expedite the disposition of landlord tenant cases: • Referral of landlords and tenants to mediation as a form of alternative dispute resolution (ADR) to expedite resolution of cases and reduction in case workload. • Faster and less costly resolution of housing mediation cases. • Mediation services widely available for tenants and landlords to support pre-court and pre-trial settlement of eviction cases. • Mediation assists in situations where agreement cannot be reached through the standard RAFT or 	<ul style="list-style-type: none"> • ISA with the Commonwealth of MA, budgeting and timeline. • Program Design document • Contracts with CMCs and funding sent/received by/from MOPC to Centers. • 16 new staff hires 	<ul style="list-style-type: none"> • Made mediation services widely available for renters and landlords to support pre-court and pre-trial settlement of eviction cases. • Established community mediation as a cost-effective public service in the Commonwealth of MA. • Expanded state funded community mediation infrastructure • Established community mediation service 	<ul style="list-style-type: none"> • Program design • Implementation plan & timeline • SOW for Intergovernmental Services Agreement (ISA) between DHCD and MOPC • SOW for Subcontracts between MOPC and CMCs • Job description for CMC Staff Case Coordinators • Program policies,

<p>resolution office with statutory oversight of community mediation).</p> <ul style="list-style-type: none"> • 1b. Program coordination team: Create an intergovernmental, cross-sector program coordination team of key partners and other stakeholders that includes representatives from DHCD and affiliated housing programs, the Trial Court, the Attorney General’s Office, legal aid organizations, MOPC and CMCs to support program development, management, outreach and funding. • 1c. Local case coordination and mediation 	<p>leading the evaluation.</p> <ul style="list-style-type: none"> • Dedicated coordinators and qualified mediators from 12 CMCs delivering remote mediation services. • Supportive staff at housing education and resource agencies and BMC, District willing to refer cases. • Funding through DHCD to enable contracted program management and mediation services from MOPC and the CMCs. • A 	<p>ERMA (Emergency Rental and Mortgage Assistance) program.</p> <ul style="list-style-type: none"> • Level of collaboration across HMP and EDI. • User, sponsor and partner satisfaction with program implementation and administration. • Program adjustments, improvements and innovations overtime • Successful expedition of program administrative responsibilities/functions. • Impact of mediation services. • Mediator neutrality, confidentiality and other standards of practice. • Successful project management practices, contracting and financial accountability practices, policies and procedures at MOPC/UMB. • Successful collaboration between MOPC and 	<p>at Centers at MOPC, including part-time and full-time MOPC program managers.</p> <ul style="list-style-type: none"> • 3 summary process / refresher trainings • 74 additional mediators trained to mediate housing cases • Weekly/monthly/biweekly meetings • Dozens of weekly/bi weekly/monthly administrative data sheets • MADtrac data 	<p>as a “go-to” place in the community for housing mediation.</p> <ul style="list-style-type: none"> • Expanded and strengthened the volunteer mediator model by generating work for volunteer and paid mediators and generated revenue to meet the operating costs of running the centers. • Program design for future expansion and replication • State dispute resolution office strengthened and sustained 	<p>procedures, and forms (e.g., referral, case intake)</p> <ul style="list-style-type: none"> • Program administration practices documentation • Remote mediation practices documentation • Outreach materials, website, etc. • Planning meeting notes • Program Coordinator Team meeting notes and presentations • Orientation materials • Training materials • Report to Governor/DHCD and Court • Research
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<p><u>services:</u> Provide free housing mediation services, remotely via video-conferencing and/or telephone, for landlords and tenants in all fourteen (14) counties of the state, both pre-court and court-connected, through the twelve (12) MOPC affiliated, state-qualified, court-approved Community Mediation Centers (CMCs) with <i>full-time housing mediation staff coordinators</i> providing screening, case management, data collection, mediator supervision, and communication with</p>	<p>collaborative DHCD and MOPC management team.</p> <ul style="list-style-type: none"> • DHCD facilitation of partnerships with other EDI partners. • Twelve (12) MOPC affiliated, state-qualified, court-approved CMCs. • Resources for remote mediation • Time invested in scoping and program design, engaging and briefing CMC case coordinators, training qualified mediators, and orienting key partners. 	<p>DHCD and other EDI partners.</p> <ul style="list-style-type: none"> • Successful collaboration between HMP partners and Trial Court. • Amount of funds dissemination to CMCs. • Methods of demonstrating impact to sponsors/funders. • # and quality of documentation/reporting to internal and external stakeholders • MOPC infrastructure for state-wide dispute resolution programming, policies and evaluation in the State of Massachusetts and at the University of Massachusetts Boston. • # of free housing mediation services. • Face-to-face or remote housing mediation via video-conferencing and/or telephone for landlords and tenants 	<p>reports</p> <ul style="list-style-type: none"> • Modified MADtrac database and data • DHCD administrator satisfaction with HMP program administration. • 93% of the 47 parties expressed satisfaction with mediation services. • Ninety-eight percent indicated of 47 surveyed mediation participants said that the mediation process was fair 		<p>reports on housing mediation</p> <ul style="list-style-type: none"> • DHCD/Court data and/or records
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<p>referral/resource agencies and courts.</p> <ul style="list-style-type: none"> • 1c. <u>Roster of qualified mediators:</u> Deploy community mediators from the CMC rosters to provide remote mediation services, selecting mediators based on expertise and experience with housing/summary process eviction cases, who are qualified to handle court referrals under the SJC Uniform Rules on Dispute Resolution and who understand relevant homelessness prevention and housing assistance 	<ul style="list-style-type: none"> • Experienced, trained and orientated mediator pool at each Center. • HCECs, RAAs and TPPs, their policies, protocols, programs, expertise and other resources. • State and federal funding for HCECs, RAAs and TPPs • EDI partners and courts refer cases to HMP. 	<ul style="list-style-type: none"> • Mediation services provided in all fourteen (14) counties of the state, both pre-court and court-connected. • Number of screenings, mediations data collected, mediator roster size, number of referrals/resource of referrals like agencies and courts, # of self-referrals etc. • Case coordinators capable of assisting mediation parties, conduct outreach and build trust and visibility of program. • Adequately trained mediators and case coordinators orientated and have substantive knowledge to mediate in complex housing disputes. • HCECs/RAAs/TPPs available, receptive to mediation and refer cases to and/or receive cases from CMCs and assist parties with housing, financial and/or legal 	<p>to them.</p> <ul style="list-style-type: none"> • 88% of mediation participants were satisfied with the outcome. • 22% self-referrals to HMP, up from 1.7% in FY18-FY20. 		
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<p>programs and resources, and train additional mediators for summary process as needed.</p> <ul style="list-style-type: none"> • <u>1d. Strategic alliance with housing agencies and courts:</u> Develop working partnerships with local courts, housing assistance agencies and legal aid organizations to help educate and assist tenants and landlords in understanding and applying for housing stability and legal resources to support informed consent in negotiating mediated agreements and to coordinate 		<p>assistance whenever possible.</p> <ul style="list-style-type: none"> • Working partnerships developed between CMCs, local courts, housing assistance agencies and legal aid organizations to help educate and assist tenants and landlords in understanding and applying for housing stability and legal resources • Mediation process supports informed consent in negotiating mediated agreements • HMP coordinates access to mediation services and diversion to mediation during court proceedings. 			
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<p>access to mediation services and diversion to mediation during court proceedings.</p>					
<ul style="list-style-type: none"> • 2a. <u>Three-tiered mediation diversion framework</u>: Institute diversion to mediation services at various stages of the eviction process by offering three inter-related options: option #1: pre-court diversion; option #2: pre-hearing diversion; and option #3: hearing date diversion. • 2b. <u>Robust</u> 	<ul style="list-style-type: none"> • Input and support for HMP from trial court departments • HMP ISA and investment of \$2,215,000 • Experienced program managers from MOPC leading program design and overseeing implementation. • Dedicated 	<ul style="list-style-type: none"> • Mediation services are provided to landlords and tenants pre-court, during court proceedings and/or before court hearing. • # of possession reverting to tenant/tenancy preservation/homelessness prevention. • # of perspectives of and techniques used to address power disparities, introduction of legal issues or pure facilitative mediation where mediators improve 	<ul style="list-style-type: none"> • 897 referrals from EDI partner agencies and the District Courts. • 505 screened cases resulting in 400 cases served. • 239 mediations. • 308 	<ul style="list-style-type: none"> • Statewide system for accessing housing mediation services upstream established to complement housing stability programs. • Diversion from placement into homeless shelters. • Prevented homelessness and homelessness associated shelter costs. • Reduced taxpayer burden on housing the homeless. • Mortgage and tax 	<ul style="list-style-type: none"> • Weekly/Monthly data sheets and weekly check-in calls • Intake, MPEFs, mediated agreements and other forms and documentation • Annual reporting • Day-to-day verbal and/or electronic communications

<p><u>housing mediation procedures:</u> Establish robust program policies and procedures that incorporate best practices for remote mediation services and address important programmatic and policy considerations such as maximizing party participation in mediation, reducing delays, tailoring mediation to the challenges posed by COVID-19 impacts.</p> <ul style="list-style-type: none"> • 2c. Outreach and mediation information: Work with DHCD-affiliated housing agencies, courts, local governments and others to provide information about and promote the 	<p>coordinators and qualified mediators from 12 CMCs delivering remote mediation services.</p> <ul style="list-style-type: none"> • Supportive staff at housing education and resource agencies and BMC, District and Housing Courts willing to refer cases. • Funding through DHCD to enable contracted program management and mediation services from MOPC and the CMCs. • DHCD, MOPC and 	<p>communication between the parties in order to increase their understanding of each side's perspective of the dispute and empower the parties to develop a solution which best meets their individual needs.</p> <ul style="list-style-type: none"> • Correlation between mediation and addressing landlord-tenant conflict and improved communication between landlord and tenant resulting in eviction prevention/homelessness prevention and/or other beneficial outcomes to parties. • Correlation between mediation and landlords and tenants reaching agreement on housing disputes and/or rent payment options. • Correlation between mediation and parties buying more time. • Correlation between mediation and prevention of 	<p>referrals from the District Courts alone</p> <ul style="list-style-type: none"> • HCECs/RAAs referred 189 cases • 239 cases mediated • At least 1500 hours conducting outreach to EDI partner agencies, District Courts, nonprofit agencies, local landlords, local businesses, and the public • Presentations to 12 different organizations 	<p>delinquencies and foreclosures avoided.</p> <ul style="list-style-type: none"> • Reduced court burden. • Increased access to justice through alternative dispute resolution. • Tenants and landlords in need become aware of a mediated solution to non-payment of rent, eviction and other housing disputes • Landlords and tenants experience a non-adversarial process for negotiating housing issues and rental payments with the help of specially trained mediators • Tenants and landlords able to establish plans for how to move forward productively in an informed and educated manner without the need 	
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<p>availability of the free, early preventative use of housing mediation services by the CMCs under the statewide program through websites, social media, public service announcements, distribution of literature, and other types of public awareness campaigns.</p>	<p>CMCs engage in HMP program outreach and education.</p> <ul style="list-style-type: none"> • DHCD facilitation of partnerships with other EDI partners. • Resources for remote mediation • Time invested in scoping and program design, engaging and briefing CMC case coordinators, training qualified mediators, and orienting key partners. • Experienced, trained and orientated mediator pool at each Center. • HCECs, 	<p>homelessness by keeping tenants stably housed.</p> <ul style="list-style-type: none"> • Correlation between mediation and landlords avoiding mortgage and tax delinquencies and foreclosures by accessing financial resources • Community Mediation Centers (CMCs) coordinate with legal aid, TPP or other community-based, non-governmental or government-sponsored housing education and resource programs and local courts. • Staff at housing education and resource agencies and BMC, District and Housing Courts willing to refer cases. 	<p>including community action agencies, landlord bodies, and housing and legal services</p>	<p>for a hearing in the court.</p> <ul style="list-style-type: none"> • Tenancies preserved and/or soft landings arranged to promote housing stability • Tenant and/or landlord economic situation stabilized/improved • Family disintegration avoided • Potential downstream litigation/adjudication costs avoided • Low-cost community mediation services leveraged to address homelessness • Foreclosures on rental properties avoided • Decreased eviction filings in the BMC, District and Housing Courts • Expedited disposition of 	
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	<p>RAAs and TPPs, their policies, protocols, programs, expertise and other resources.</p> <ul style="list-style-type: none"> • State and federal funding for HCECs, RAAs and TPPs 			<p>pending summary process cases in District, BMC and Housing Courts</p>	
<ul style="list-style-type: none"> • <u>Program evaluation and impact:</u> Demonstrate the value of the program through systematic collection and evaluation of implementation and impact data using indicators developed in consultation with DHCD to measure and verify program success and the MOPC/CMC data base system already in 	<ul style="list-style-type: none"> • One lead researcher and two assistant evaluators. • Survey tools • Qualitative and quantitative data analysis tools. • Case intake, mediation agreements and other documentation. • Time and 	<ul style="list-style-type: none"> • Sample size • Access to sources of information, particularly mediation participants • Reliability and validity of data (inter-coder reliability etc.) • Quantitative and qualitative (mixed methods) • Managing complexity • Establishing correlation or causality 	<ul style="list-style-type: none"> • One new graduate research assistant hired • One evaluation plan and indicators • Three online survey instruments and four interview protocols 	<ul style="list-style-type: none"> • System of credible assessment to measure the success of the remote housing mediation services • Development of an evaluation and research framework to systematically collect and analyze housing mediation program data. • Established the implementation and impact of 	<ul style="list-style-type: none"> • HMP evaluation plan • HMP evaluation instruments • HMP data • Evaluation report

<p>place and provide periodic written reports on program performance to partners and stakeholders.</p>	<p>input of MOPC and DHCD program managers.</p> <ul style="list-style-type: none"> • Time and input of mediation participants, mediators and case coordinators. • MADtrac and STATtrac databases and data. 		<p>to collect data from mediators, parties, case coordinators, MOPC and DHCD.</p> <ul style="list-style-type: none"> • 47 mediation participant online surveys • 16 mediation participant, 10 mediator and 5 case coordinator interviews • 31 interview transcripts • 174 case intake and mediation forms 	<p>housing mediation delivered by the HMP.</p> <ul style="list-style-type: none"> • Establishment of evaluation frameworks for continuous study of the impact of housing mediation on landlords, tenants, Community Mediation Centers, MOPC and sponsors and funders. • Expanding mediation participant feedback to increase user participation and empowerment in evaluation. • Development of economic analysis models. 	
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			<ul style="list-style-type: none"> • One excel sheet with data mining from case forms • One computerized coding and 5 draft data analysis documents • One DHCD and MOPC debriefing interview transcript and analysis 		
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