Schools Excess Liability Fund (SELF) is working hard to protect our school district, community college and other educational agency members, just as it has done for the past 35 years. A current and significant challenge before school districts is from the ***revived liabilities*** resulting from ***AB 218,*** which went into effect January 1, 2020.

We have created this document to explain Schools Excess Liability Fund's (SELF's) history, and plan for implementation of the AB 218 Revived Liability Funding Plan (AB 218 RLFP). This is an assessment of SELF's current and past members to fund a new liability exposure that previously did not exist under the law, and that was not anticipated by SELF or its membership in prior underwriting.

What is AB 218?

The California Child Victims Act, or AB 218, was enacted effective January 1, 2020. This new law has affected the legal climate in California and provides significant new/revived liability exposure to schools for sexual assault claims related to minors. The new law has the following impacts:

- Allows for a three year "revival period", effective January 1, 2020, with an unlimited statute of limitations for claims to be filed alleging improper sexual conduct against a minor from any time in the past, not just against the perpetrator, but against employers based on claims of negligent supervision or hiring.
- Changes the type of behavior from "abuse" to "assault", which broadens the definition of alleged misconduct.
- Provides for the recovery of treble damages in cases where a "cover up" by the district can be proven, defined as "a concerted effort to hide evidence relating to childhood sexual assault."
- Permanently extends the statute of limitations on child sexual assault claims to age 40 from age 26, and potentially even longer in repressed memory cases.
- Deletes entirely the requirement of filing a government claim.

As you can see, the passage of AB 218 presents significant financial liability exposures to California educational systems.

Who is SELF?

SELF is a Joint Powers Authority (JPA) formed in 1986 by school districts, county offices of education, and community colleges statewide. SELF remains owned and managed by school districts and community colleges.

JPA's are risk sharing pools, much like a private or public insurance company, in that they support member districts and provide fiscal protections from claims and lawsuits, and funding for settlements and jury verdicts. JPAs, however, are not insurance companies; they are public agencies. JPAs are owned and managed by their members and do not have a profit motive. They exist purely for the benefit of their members.

To join SELF, as with any JPA, each member must have its Board adopt a resolution agreeing to a JPA Agreement and by extension the Bylaws. By adopting the JPA Agreement, each member agrees to participate in the risk sharing pool under the terms and conditions included therein. This means that each member shares in the fiscal impacts of retroactive laws such as AB 218. Throughout SELF's history, it had as many as 1,200 educational entities as members, educating 6.2 million California students. While our membership included the vast majority of California's public school ADA, this also means when a claim is filed against a school district in one of those historic years, SELF is providing that layer of protection because nearly all school districts participated in our programs.

The JPA Agreement and Bylaws collectively include provisions to address membership requirements, define the programs operated, authorize the collection of member contributions (including additional/special contributions), and authorizes the expenditure of funds to administer the programs. Assessments are authorized to ensure that members receive the liability protection that they depend upon. The ability to assess is nearly universal among all JPA's in California and is not unique to SELF.

What is the total amount being collected by SELF at this time?

As of June 30, 2020, SELF received 18 claims representing more than 60 plaintiffs. These claims represent $46.7 million of claims and actuarial liabilities, as identified by our independent actuarial firm, Bickmore Actuarial. "Actuarial liabilities" means reserves on claims plus the actuary's estimate of further claims development. These liabilities are considered "revived" as they were previously beyond the statute of limitations in California.

To protect public education against the impact of AB 218, SELF has developed a funding plan to address the claim liabilities revived by the law. The SELF Board authorized the AB 218 Revived Liability Funding Plan (AB 218 RLFP) and approved a resolution in June 2020 authorizing the collection of $46.6 million in funding.

This plan was developed with the goals of equity and transparency. We reviewed SELF's history and obtained the assistance of external, industry specialist actuaries, attorneys and accountants to oversee the development of our plan. We did this to ensure it was appropriate and in compliance with the governing documents and the history of SELF.

As we progress within the three-year revival period (ending 12/31/2022), the SELF Board will continue to monitor additional incoming claims and be guided by actual experience and actuarial modeling to determine the funding amount necessary to meet developing liabilities.

Why is this necessary?

SELF is a school focused organization and does not unnecessarily retain member contributions in equity. That member focus comes from the fact we are owned and operated by YOU; our member school districts. In fact, the SELF Board returned $69 million in funds to member districts in the form of rebates and rate credits between 1990 and 2004. This was done, at the time, consistent with actuarial analysis and board policy. Consequently, that return of your equity requires funding anew for this unfunded mandate imposed upon schools.

Now schools are faced with another unfunded mandate from the State Legislature in the form of AB218. Due to the retroactive nature of this new law, school districts have reported to SELF claims going back to our inception in 1986. Some of our members have received claims as far back as the early 1970's. In addition to the number of claims being received by our member districts, the treble damages clause in the law is contributing significant inflationary pressure on settlements.

Based upon our review of historic program year operations, SELF has identified the following program years for collection of AB 218 RLFP additional contributions: **1996-97, 1999-00, 2006-07, and 2016-17.**

Why does a JPA assess members?

As previously discussed, JPA's are risk sharing pools comprised of their members, public agencies. JPA's do not operate as a profit center. JPA's such as SELF hold school district funds in reserve based on actuarial science. Actuaries only forecast liabilities based on current state law, so SELF would not hold funds belonging to school districts or forecast losses that do not legally exist at the time. This retroactive unfunded mandate on schools has necessitated, in turn, a retroactive funding solution based on this new law.

The SELF governing documents include the JPA Agreement and Bylaws. The Agreement provides the SELF Board the authority to collect contributions as well as additional contributions, also known as special assessments. The Agreement and Bylaw referenced herein are from the governing documents in effect for the 1996/97 program year, however, the same language and principles are in effect for the other program years as well.

JPA Agreement Section III. ADMINISTRATION, paragraph B.2. provides the Administrator (SELF Board) with the authority to "Establish yearly contributions and loss reserves for each program and return of contributions, if appropriate."

The Agreement, Section V FINANCE AND INVESTMENTS provides authority to collect a pro-rated amount of "Additional Contributions" to meet the claims liability:

V. FINANCE AND INVESTMENTS

Each **party** to the Agreement shall pay to SELF each **fiscal year** an amount calculated pursuant to Paragraph III.B.2, as the established yearly contribution for each **program** in which a **party** participates.

A. Contribution Schedule: Contributions shall be made in advance based on the established yearly amount calculated by the **Board**. Contributions shall be determined using appropriate actuarial principles.

B. Additional Contributions: Should **claims** against or by the **parties** to any **program** exceed the amount available for the payment of such **claims**, then each **party** to such **program** shall be required by the **Board** to contribute an additional pro-rated amount sufficient to meet the **claims** liability.

Source: SELF JPA Agreement dated 7/1/96

In addition to the JPA agreement, the SELF Bylaws (Bylaws) provide additional guidance for the additional contributions process. The SELF Bylaws, Article XI. FINANCE provides:

> ***Additional contributions, if necessary, shall be assessed as provided in the Agreement." (JPA Agreement)***
>
> ***The Board, at its discretion, may declare equity distributions of surplus reserves and assess parties for any plan year deficits which may occur on a pro rata basis. Pro rata, for the purposes of calculating a party's equity or deficit, shall mean to determine separately for each plan year, a party's share of the equity or deficit by multiplying the total equity or deficit by a fraction, the numerator of which is the total contribution and assessment paid to such plan by the party during such year, and the denominator of which is the total contribution and assessment paid to such plan by all parties during such year. Equities and deficits do not accrue to the parties until declared by the Board.***

Source: SELF Bylaws dated 7/1/96

Actuarial Analysis

As provided above, the Agreement, paragraph V.B. provides that "Contributions shall be determined using appropriate actuarial principles." As of June 30, 2020, SELF, utilizing Bickmore Actuarial, has identified $46.7 million of claims and actuarial liabilities. The report includes analysis and estimates of claims reported, incurred but not reported costs (IBNR), and loss adjustment expenses (LAE), and is summarized as follows:

Schools Excess Liability Fund: AB 218 Excess Liability

Executive Summary

Self-Insured Liabilities

The following chart summarizes our estimates of SELF's excess liability financial position and loss and ALAE liabilities related to AB 218 at 6/30/20. The liabilities only include those AB 218 losses retained by SELF net of reinsurance.

Loss and LAE Liabilities at 6/30/20 Excess Liability (All figures in $000's)				
	Not Discounted	NPV at 1.50%	NPV at 1.75%	NPV at 2.50%
Confidence Level				
Expected	$46,700	$45,996	$45,884	$45,555

Source: Bickmore Actuarial, Actuarial Review of the SELF Excess Liability Program AB 218 Liabilities Only, November 17, 2020

"IBNR" refers to the actuary's estimate of adverse claim development on reported claims, plus an estimate of further claims to be received, based on past patterns. In this case, the Board has approved an assessment at the "expected" confidence level per the actuary, without discounting for investment income, due to the low investment return environment and the likelihood that many of these claims are going to be litigated to conclusion in the next few years.

Historical Program Year Operating Results

As provided above, the Bylaws, require a "pro rata" calculation for assessing additional contributions. Paragraph XI.E provides "for purposes of calculating a party's equity or deficits, shall mean to determine separately for each plan year…". Accordingly, we have consulted with James Marta and Co., an independent accounting firm, to calculate and reconcile equity/deficit positions from 1986-2019. We identified the **1996-97, 1999-00, 2006-07, and 2016-17** program years in which 1) AB218 claim(s) have been received and 2) the program year accounting reflects a deficit position from operations.

In compliance with the governing documents, SELF considered historical program year accounting to evaluate the funded status of historical claim years. This analysis was completed back to 1986 (when SELF was formed). Each claim year was considered individually to determine if the results of operations for each year were sufficient to fund additional claims related to that year. If a claim year is in a surplus position (excess remaining of revenue over expenses) the fiscal year still has resources allocated to fund additional claims. If in a deficit position (excess of expenses over revenues) the fiscal year is in need of additional resources to fund claims.

The Summary Schedule of Pool Equity by Program Year, as prepared by James Marta & Co, was compared against the claims received, by program year, to determine the funded status of the affected

program years. Following is a summary of the four program years we have identified with deficit positions which require assessment of additional contributions:

Summary Schedule of Pool Equity by Program Year - Selected Years for AB 218 RLFP
As of June 30, 2019

	1996-1997	1999-2000	2006-2007	2016-2017
Revenues:				
Member Contributions & Other Income	$ 10,270,785	$ 9,333,346	$ 17,872,000	$ 14,362,888
Investment Allocation	522,391	(6,959,809)	1,338,068	174,864
Rate Credit	-	(5,500,000)	-	-
Total Revenues	10,793,176	(3,126,463)	19,210,068	14,537,752
Expenses:				
Operating Expenses	(1,039,592)	4,997,900	8,788,994	9,591,283
Premium Rebate Expense	-	-	-	-
Claims Expenses	27,384,573	8,546,323	31,955,187	16,190,381
Total Expenses	26,344,981	13,544,223	40,744,181	25,781,664
Change in Program Year Net Position	(15,551,805)	(16,670,686)	(21,534,113)	(11,243,912)
Net Position Adjustments:				
Assessments	-	-	-	-
Equity Adjustments	(1,967,999)	-	-	-
Net Position at End of Program Year:	$ (17,519,804)	(16,670,686)	(21,534,113)	(11,243,912)

Source: James Marta & Company LLP, Equity Calculation & Reconciliation by Program Year. January 8, 2021

Why were these years chosen?

In compliance with the governing documents, we applied the assessment for additional contributions only to program years with deficit positions. In determining which years to collect additional contributions from, we applied a historically based prospective approach (starting with the oldest years and then moving forward in time). We looked at all the claims received and the occurrence date. The following analysis was performed using claims data as of June 30, 2020:

1. First, we identified program years with posted claim reserves which fell in deficit position years. This identified the 1999-00 and 2016-17 program years.
2. Then, we looked back to the earliest deficit claim year(s) in which we had received claims. Again, considered prospectively, this identified the 1996-97 and then 2006-07 program years for additional funding consideration.
3. We then determined the allocation of additional contribution funding consistent with this methodology as scheduled below.

Allocation of Policy Year Deficits and Pro Rata Additional Contributions		
Fiscal Year	**Policy Year Deficit Position**	**Pro Rata Additional Contributions**
1999-00	$ 16,670,685	$ 15,384,174
2016-17	11,243,911	11,243,911
1996-97	17,519,804	15,923,831
2006-07	4,427,239	4,048,084
Relativity Factor	(3,261,639)	
	$ 46,600,000	$ 46,600,000

The above calculation includes the application of a "Relativity Factor" per SELF rate setting practice. The relativity factor is calculated, by SELF's independent actuary, Bickmore Actuarial, to reflect the relative historical claims experience between the two classifications of SELF members; K-12 and higher education.

Per SELF's Retroactive Risks Policy, the SELF Board approved application of the relativity factor in the calculation of additional contributions for higher education entities. This was approved in recognition of the historic experience, as well as the reduced exposure specifically related to AB 218 and the member's student population. K-12 risk exposure is deemed higher as a result of the primary population of minor students, as compared to a majority adult population in higher ed.

It should be noted, there were multiple years in which AB 218 claims were received in historic program years with a surplus position. Consistent with our methodology and governing documents, we determined these program years to have funding available to fund claim(s). Accordingly, these years are currently not included in the program years identified for additional contribution funding.

It is important to note that we are assessing based on current estimates of liability, including case reserves and IBNR. As the claims develop, most of the claims reserves and IBNR will become claims paid, and the payments will be assigned to the proper program years based on the underlying facts. The contributions of each member, including additional contributions and claims development will be tracked and accounted for annually. The balance of pool equity (surplus or deficit) for each program year will be determined annually and evaluated for adequacy of funding in consideration with any additional claims development.

How was the assessment calculated?

In compliance with the governing documents, the calculation of all AB 218 RLFP additional member contributions have been calculated on a pro rata basis; allocating the deficit position relative to each member's original contributions. We calculated all additional contributions to either a flat rate,

minimum rate, or per ADA or FTES basis, consistent with historic and current SELF contribution calculation and invoicing practices.

We determined the funding amounts based on the self-retained coverage provided in each program year. This did not include optional or reinsured layers of coverage. Therefore, revenues for the optional/reinsured layers were removed from our pro rata calculation at this time (not included in Original or Total Member Contributions). Original Contributions, therefore, only includes revenues from the self-retained layers.

The per member additional contribution amounts were calculated according to the following examples:

1996-97 Program Year – Sample (K-12) ($1M attachment point - $2.00 per ADA original contribution rate)

Program Year Deficit Position	X	Original Member Contributions	/	Total Original Contributions	=	Pro Rata Share of Deficit	/	ADA	=	Pro rata share per ADA
$17,519,804	X	$44,744	/	$9,793,237	=	$80,046	/	22,327	=	$3.58 per ADA

1999-00 Program Year –Sample CCD ($5M attachment point - $0.55 per FTES original contribution rate)

Program Year Deficit Position	X	Original Member Contributions	/	Total Original Contributions	=	Pro Rata Share of Deficit	/	FTES	=	Pro rata share per ADA	X	Relativity Factor	=	Pro Rata Share with Relativity
$16,670,685	X	$17,304	/	$7,773,125	=	$37,111	/	31,462	=	$1.18 per ADA	X	0.535	=	$0.63 per ADA

The per ADA/FTES, minimum rate, and flat rate contribution amounts are summarized in the following tables.

Per ADA amounts	96-97	99-00	06-07	16-17
K-12 @$1M	$ 3.58	$ 3.65	$ 2.08	$ 4.17
K-12 @$5M	$ 1.22	$ 1.18	$ 0.53	$ 4.17
CC @$1M	$ 1.91	$ 1.95	$ 1.12	
CC @$5M		$ 0.63	$ 0.28	$ 2.95
CSU @ $1M	$ 1.91	$ 1.95		
CSU @ $5M			$ 0.28	

Fixed Rate & Minimum Amounts	96-97	99-00	06-07	16-17
ROP & SpEd JPAs	$ 894.48	$ 1,072.33	$ 398.95	$ 3,148.11
Sister JPAs & Special Purpose JPAs		$ 1,072.33	$ 398.95	$ 3,148.11
CSU Foundations - fixed rate			$ 213.44	
CSU Foundations - covered payroll			Pro-Rata	

Member Invoices for Additional Contributions

- Members are only invoiced for the year(s) they participated in the SELF Excess Liability Program
- Invoice payments are due 60 days from the invoice date.
- **Members/JPAs have the choice of making payments, either:**
  - Paying the required additional contributions in 3 annual payments (current FY 20-21 contribution, plus additional contributions to be billed for the 21-22 and 22-23 FYs), or
  - Complete, and timely payment of the entire additional contribution amount. ***Members who elect to pay the full amount due in one payment will be provided a 3% discount to the invoiced amount.*** This discount option is reflected on the member invoice.
- Invoices not paid timely will be deemed delinquent and subject to standard SELF delinquency penalties; a 2% penalty with interest calculated at 1% per month thereafter