



# AMERICAN BENEFITS COUNCIL

## POMEROY PERSPECTIVES BEHIND THE SCENES IN CONGRESS: INTERVIEW WITH REPRESENTATIVE JOHN KLINE

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Earl Pomeroy has long been a champion of employee benefits and helping Americans achieve health and financial well-being. As the at-large member of Congress from North Dakota, he served on the U.S. House of Representatives Ways & Means Committee, which has jurisdiction over employee benefits policy. Earl is now senior counsel at Alston & Bird LLP and a member of the American Benefits Council's Policy Board of Directors.

Drawing upon his legislative experience and background as a state insurance commissioner, Earl focuses his current work on financial services regulation, health care, pensions, tax, energy and agriculture policy.

In this occasional series, Earl will discuss trends, challenges and opportunities with leading thinkers and policymakers. He will also share his expertise and perspectives on public policy. Earl conducted the following interview with Representative John Kline (R-MN), chairman of the House Education and the Workforce Committee, in March, discussing the passage of multiemployer pension reform in the 113th Congress, the effects of the 40 percent excise tax on high cost health care and the Congressional response to the recent litigation against employer wellness programs.



Earl Pomeroy

House Education  
and the Workforce  
Committee Chairman  
John Kline (R-MN)



*Please note that some editing has been made for clarity and space considerations.*

**EARL POMEROY:** *Let me just say, Mr. Chairman, someone with whom I put many miles on the airplane together, flying back and forth to the Midwest, congratulations for your passage of the “Solutions Not Bailouts” response to the multiemployer pension crisis. It was one of the slickest pieces of legislating I’ve seen in the 18 years I was on Capitol Hill and in the years since. So I want to congratulate you for that astounding achievement and capture your reflections. How do you feel about that victory and what motivated you to give that tremendous effort?*

**JOHN KLINE:** Well the two are combined. As you know very well, the problem has been sitting out there and getting worse. And you and [Representative] Pat Tiberi (R-OH) and others said “We’ve got to do something about this, we’ve got to fix it,” but people said it couldn’t be done. When, in the end, we got it done, it was huge. I told somebody the other day that if I didn’t do anything else, that would still make my time in Congress well spent.

**EP:** *You know, for a Congress that was really rife with partisanship, at the end, you and [Representative] George Miller (D-CA) – a friend, but on the other side of the aisle – had clashed on many things, but there you were, arm-in-arm, carrying this through the gauntlet that few thought you could survive, right? How did you interest him in being a full partner in this effort?*

**JK:** Well, you may be giving me too much credit. George Miller and I would joke that when I voted “red” on anything, he was going to vote “green,” so I could just walk in, see how he voted, and I was going to vote the other way. But he was a real legislator and here in Congress for a very long time and he genuinely knew that the multiemployer pension system was a problem that was getting worse, not better. He told me that he wanted to fix it, and he was sincere about it, and we had something to work with. The National Coordinating Committee for Multiemployer Plans (NCCMP) had put a lot of work into this, so we had something to work from.

[Miller] was concerned that members on his side of the aisle might be put in a tough position if they had to even think about voting for something that would result in a reduction of benefits to a pension plan. So that focused the effort to working on it in the lame duck session. I thought it was critical – and I want to give George as much credit because we could not have done it without him because we needed this to be a bipartisan effort. I do not think it would have been as easy and maybe not possible if we’d waited until after the new Congress was sworn in, because I needed George’s muscle in the Democratic party. And he got to work. He had staff almost move in here to our office for a while. It was a bipartisan product at the end, and it took all hands to move it. George Miller working with House Minority Leader Nancy Pelosi (D-CA) and Democrats and frankly U.S. Department of Labor (DOL) Secretary Tom Perez – spent a lot of time working the Senate Democrats to get it done.

**EP:** *The commendable thing about the group is the substantive approach that really transcended political opportunity, or, for that matter, ideology. You’ve got multiemployer plans on an irreversible course towards insolvency, so you restructure the liabilities now, meaning pare back the benefits structure, but in order to make it sustainable – as compared to just a sleigh ride down to insolvency with an insufficient PBGC guarantee – you in the end preserve benefits. It was a benefit preservation bill.*

*“Do we want to make an adjustment here ... that keeps the plan solvent, or do we do nothing and risk leaving retirees with nothing?”*

*–Kline*

**JK:** That’s exactly right, and George Miller was very eloquent and articulate in carrying that message. He made it clear and then Secretary Perez had the similar message to Democrats. They said: “Look, we have a bad choice, we have a worse choice, we have a much worse choice, and we’ve got total calamity. If we don’t take the bad choice now, then we go to the worse and the much worse.”

And so, as George said, “Look, all we’re really doing here is we’re allowing these plans and their participants to make that decision [to reduce benefits].” Do we want to make an adjustment here, even taking a benefit cut, that keeps the plan solvent, or do we do nothing and risk leaving retirees with nothing, because the weight of these plans were so heavy that you could break the PBGC. The PBGC pays very little to the multiemployer plans compared to the single employer plans, but if you break it, you’ve got nothing.

We had to educate House members quickly, and there were a lot of other things going on at the same time during the lame duck. Sometimes those are peaceful and sometimes they’re hectic and this was in the hectic category. But it was able to come together and it went through, and from my side of the aisle, people looked at it and said, “You mean we’re giving people a chance to save their pensions and we’re making the PBGC more solvent and there’s no taxpayer bailout and we’re not raising taxes to do it? Let’s go! Let me sign on here!”

**EP:** *You mentioned the staff contribution, and I do think that compels acknowledgement. Often, especially late in a session, perfectly fine ideas stall out because you just can’t get the language, and you had very skillful staff people put together incredibly complicated drafting. Admittedly, the NCCMP product was a foundation, a guide, but that’s not legislative language and I really commend the staff effort.*

**JK:** The starting point of the NCCMP, their written work, more importantly their being together in a room, gave our staff a chance to work with those people to start to produce the legislative language. It took a ton of hard staff work, and then the members – George Miller and I and others – had to actually get up and go to work and educate people and convince people and get it out there. Because the time frame was so short that on Saturday (December 6, 2014), I was with my wife and was on the phone to staff, to Ways & Means Chairman Paul Ryan (R-WI), and to Secretary Perez. We had to bring it through on the weekend because we knew that we were quickly running out of time.

**EP:** *I think we can call that “Resurrection Saturday,” because the bill was dead at that point.*

**JK:** That’s right!

**EP:** *And you brought it back. And let's just use this as a segue to the next dimension of talking about pensions. Chairman Paul Ryan made a commitment that he was going to look at another facet of the whole proposal, which did not get enacted, and that relates to a new plan design.*

#### **A NEW PARADIGM FOR EMPLOYER PENSION PLANS**

**EP:** *Is there a way to structure pensions in a new way where the risk is not all left with the employer or all with the employees, as has been typical with defined benefit versus defined contribution plans, but something in the middle, where the risk is more broadly shared?*

**JK:** Well we clearly think there is. That was part of my conversation with Paul Ryan on that Saturday, that we would work together to modernize the multiemployer pension system, and we are continuing to work on that. And frankly, there's another piece that needs to move with that; we're going to have to continue our efforts to improve the long-term solvency of PBGC. What we did in December was helpful, but, as you know, they're pretty badly underfunded when you start to project liability. We owe to workers, retirees, and taxpayers to continue our work on that as well.

**EP:** *This interview will be read by a lot of employers with single employer plans. Do you think something, a new plan design, may have ultimately broader interest for consideration in pensions other than the multiemployer structure?*

**JK:** I don't know. It's a little bit different; when you have a single employer plan, you have different management set-up than you do with the trustees you've got with multiemployer pension plans, so I'm not sure. Some single employers actually have a similar arrangement, where for a long time they had a defined benefit plan, and now they've converted to a 401(k) but they've still got some legacy benefits out there, although I don't know how much of that's going on. I'm always happy for people to be looking for new ideas.

**EP:** *I hope that there will be some residue from the work product on multiemployer pension plans this session. It may provide some very interesting thinking on whether there is a middle way between defined benefit and defined contribution – one that offers more protection than a defined contribution format, but on the other hand, is a manageable risk where employers feel like they can continue without putting their business at risk.*

**JK:** Right, and that's absolutely huge, because you can see that there's kind of a rush to the doors for employers, and because there is no withdrawal liability associated with this new plan, that makes it attractive for them to stay with the program.

*“We're going to have to continue our efforts to improve the long-term solvency of PBGC. As you know, they're pretty badly underfunded when you start to project liability”*

*–Kline*

## HEALTH CARE AND THE 40 PERCENT EXCISE TAX

**EP:** *Let's move quickly to health and your committee, which has jurisdiction over all matters of employee benefit plans. We're watching the tremendous impact of this pending 40 percent excise tax enacted with the Patient Protection and Affordable Care Act (PPACA), on the traditional structure of employer plans. Employers tell us that they are overwhelmingly looking at changes in order to stay under that excise tax threshold. Will this be an area of exploration by your committee?*

**JK:** The short answer would be yes, but we're looking at much more than that. It is ironic because the law makes employers provide more than they want to provide in some places, but where they want to provide more, they're prohibited from doing so, so it's a very strange thing. We're now watching the Supreme Court and the *King v. Burwell* decision very closely. I went to hear the oral arguments, which I found absolutely fascinating. We see the very real possibility that the plaintiffs will win in *King v. Burwell*, and then in those states with federal exchanges, folks will suddenly find out that they're not getting the subsidy they thought they were going to get. So the three House committees with jurisdiction – Ways and Means with Paul Ryan, Energy and Commerce with Fred Upton (R-MI) and Education and the Workforce with me – are working together. In fact, we wrote, [an op-ed for the Wall Street Journal](#) called “An Off-Ramp for Obamacare” to address the immediate problem of folks finding out that they were going to have subsidies and now they don't. And we are looking to put into place steps to fundamentally replace Obamacare, give the option to do something other than that. And of course, you wouldn't have that strange mandate situation which says “you must give more than this, but if you try to give more than that, then you're going to be penalized.” We won't let that happen.

**EP:** *Senator Orrin Hatch (R-UT), Senator Richard Burr(R-NC) have worked on this area also. Are you in cross-chamber discussions with them as well?*

**JK:** We are. Congressman Fred Upton in fact was working very closely with Senators Hatch and Burr. There are essentially three members in the Senate, three of us in the House and we are staying in touch, and our staffs stay in touch as we try to put this together.

*“The law makes employers provide more than they want to provide in some places, but where they want to provide more, they're prohibited from doing so ... it's a very strange thing”*

*–Kline*

## EMPLOYER WELLNESS PLANS AND THE EEOC

**EP:** *A final question related to the discussion this week on the committee's interest on wellness programs: How do you see Congress weighing this substantial innovation of wellness programs as part of health plans and the challenges they're having from a regulatory standpoint?*

**JK:** Well the challenge is coming from the EEOC. The wellness programs are proven: they work, employers like them, employees like them, the PPACA likes them – the EEOC has a problem with them. So we have been pushing back on the EEOC. We just had a subcommittee hearing on that very issue. The EEOC is regulating where it shouldn't be regulating. The Senate is already starting to take action and if EEOC continues taking steps that have a chilling effect on employee wellness programs, I'm sure we will too.

**EP:** *Mr. Chairman, thank you for sharing your thoughts on these important matters.*

*“Wellness programs are proven: they work, employers like them, employees like them, the PPACA likes them – the EEOC has a problem with them.”*

*–Kline*