



# AMERICAN BENEFITS COUNCIL

## POMEROY PERSPECTIVES LESSONS FROM THE LAME-DUCK SESSION

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**Earl Pomeroy**

*Earl represented the National Coordinating Committee for Multiemployer Plans (NCCMP) in its successful effort to secure legislative approval this week of its "Solutions Not Bailouts" multiemployer pension plan proposal. In this second in our series of "Pomeroy Perspectives" the Council staff asked Earl to share his insights on this experience and the task of enacting complex legislation during a "lame duck" session of Congress.*

The final throes of Congress' "lame-duck" session became a spectacle that was a wonder to behold. In the midst of tremendous commotion, and with the government on the brink of a shutdown resulting from a lack of required appropriations, the House and Senate each passed the most important multiemployer pension plan reforms since 1981. As a result of congressional action, terminally ill plans heading for insolvency will be able to restructure and preserve benefits for retirees and workers which are superior – often vastly superior – to the Pension Benefit Guaranty Corporation (PBGC) guarantees for those stuck in insolvent plans.

There are some early lessons to be drawn from the legislative effort that has produced this result.

1. **Necessity is the mother of invention.** With nearly 10 percent of multiemployer plans heading to insolvency and with no prospect of federal funds to address the shortfall, a private-sector solution had to be found.
2. **Consensus solutions that tackle serious issues and produce substantive solutions can win bipartisan support – even in polarized times.** Randy DeFrehn, head of the National Coordinating Committee for Multiemployer Plans (NCCMP), launched a commission comprised of equal numbers of labor and employer representatives to find a consensus solution that did not include federal bailout dollars. Some dismissed this effort as hopeless; but after 18 months of study an agreement was reached on reforms required to save terminally ill plans. Two central features of the compromise, which became known as [\*Solutions Not Bailouts\*](#), were:
  - Annuity benefits would be preserved for retirees.
  - Plan restructuring, including benefits paid to active and retired workers, could be made if doing sustained plans which would otherwise become insolvent.
3. **You can't stop something with nothing.** While *Solutions Not Bailouts* drew loud opposition, no alternatives to address this problem, other than involving a bailout funded by taxpayers – a political fantasy – were presented as alternatives. There is a reason for this: if there were an easier way to save failing pensions, those concerned about the fate of these plans would have embraced it. Pretending something can be fixed less painfully later is not a plan, it's denial. After three years, several congressional hearings and many public events on *Solutions Not Bailouts*, no serious alternative plans emerged – a clear indication there were no easy or painless ways to tackle this problem.
4. **Chronic problems must be addressed sooner rather than later.** When the latest PBGC report, issued in November, proved the seriousness of the growing crisis, key members of Congress resolved that action had to happen this year. Plan trustees needed the ability to act to save as many as pension plans as possible. The sooner chronic problems are addressed, the more modest plan changes could be. No one wants benefits cut for active and retired plan members. But even small measures taken now preserve benefits that would be lost with delay. That is why this action had special urgency.
5. **The lame-duck session is a difficult time to do business.** When legislators come back to Washington after an exhausting, bruising and – in this case – ground-shifting election campaign, it is difficult for them to focus on serious legislating. Yet business must be done. This year, expiring tax provisions had to be extended and an agreement on government funding had to be put in place to avoid a government shutdown.

Think of year-end bills as the last trains out of the station before Congress quits for the year. Lawmakers try to attach their proposals to be carried with must-pass legislation. The negotiations over the multi-employer provisions, at times, proved different than the “How a Bill Becomes Law” lessons we all learned in Civics 101; and at several points during this lame duck session, all appeared lost. But prospects brightened with timely advocacy or the reversal of opinion by key lawmakers.

6. **There is good and bad about having a bill in a larger legislative package.** With only a limited number of legislative vehicles available, getting your provision included allows the proposal to move forward. However, it is at risk of defeat by whatever controversy may involve the bigger bill, regardless of the support for the included provisions.

The nail-biting procedural vote on the House floor on December 11 was jeopardized by riders added by Republican leaders to broaden the appeal of the package to their rank and file members. This turned Democrats who were previously leaning for the package against the bill. The resulting fight was intense and bitter, but had nothing to do with the Solutions Not Bailouts provisions included in the bill. I haven’t watched a vote on C-SPAN since leaving the Congress, but my eyes were glued on the television as the final votes were cast. Once in a while, C-SPAN is more exciting than televised sports, and this vote proved the point. When the gavel came down and passage was announced, the effort to save failing multiemployer pension plans – and preserve retirement security – took a giant leap forward.

7. **Never underestimate the lure of going home for Christmas.** With so much controversy in the House, one would have expected the Senate, with its 60-vote hurdle, to be even more intense. But that chamber approved the bill by a bipartisan 56-40. Democratic Senators, for the most part, understood that this was the last package they would negotiate as members of the majority. Whatever they disliked about the package would become worse from their perspective if redone early next year with Republicans in the majority. Besides, as the House wrapped up and headed home, Senators also felt the irresistible draw of going home. There will be no shortage of fights next year, but for now, the holidays loom large.

The fight to preserve multiemployer pensions has taken its toll on many politicians – including yours truly. But after a lengthy battle, Congress on a bipartisan basis approved much-needed security for the nearly 11 million workers and retirees who rely on these plans, and the employers that sponsor them. The President is expected to sign the measure into law very shortly. And then, for a couple weeks, let there be peace in the nation’s capital.