

**AMENDMENT TO THE DISCUSSION DRAFT**

**OFFERED BY MR. POMPEO**

**[Amendment has been formatted only and refers to SLW\_126,  
dated March 20]**

Page 4, strike line 7 and all that follows through  
page 5, line 6, and insert the following:

1           (1) NOTIFICATION BY BREACHED COVERED EN-  
2           TITIES CONTRACTED BY NON-BREACHED COVERED  
3           ENTITIES.—

4           (A) IN GENERAL.—Subject to the excep-  
5           tions in subparagraphs (B) and (C), in the  
6           event of a breach of security of a system main-  
7           tained by a breached covered entity, the  
8           breached covered entity shall, as expeditiously  
9           as possible and without unreasonable delay fol-  
10          lowing discovery of the breach of security, no-  
11          tify each non-breached covered entity of the  
12          breach of security at least 15 calendar days be-  
13          fore, and in addition to, providing notification  
14          as required under subsection (a).

15          (B) ELECTION BY NON-BREACHED COV-  
16          ERED ENTITIES AFTER RECEIVING NOTICE  
17          FROM A BREACHED COVERED ENTITY.—A non-

1           breached covered entity that receives notifica-  
2           tion pursuant to subparagraph (A) from a  
3           breached covered entity may elect to, and if so  
4           shall, provide notification to a group of affected  
5           individuals who are its customers, clients, em-  
6           ployees, or contractors in place of notification  
7           to the same group of individuals by the  
8           breached covered entity required under sub-  
9           section (a), provided that the breached covered  
10          entity—

11                   (i) is party to a valid and enforceable  
12                   written contract under which it maintains,  
13                   stores, transmits or processes data in elec-  
14                   tronic form containing personal informa-  
15                   tion related to the same group of individ-  
16                   uals on behalf of the non-breached covered  
17                   entity electing to provide notice;

18                   (ii) has consented in the written con-  
19                   tract described in clause (i) that the non-  
20                   breached covered entity electing to provide  
21                   notice has the right to provide such notice  
22                   in compliance with all of the requirements  
23                   of subsection (a) in place of notification to  
24                   the same group of individuals by the  
25                   breached covered entity; and

1 (iii) shall remain obligated and liable  
2 to provide the notification required under  
3 subsection (a) to any affected individuals  
4 not notified by the non-breached covered  
5 entity electing to provide notice.

6 (C) BREACHED COVERED ENTITY OBLIGA-  
7 TIONS AFTER ELECTION BY NON-BREACHED  
8 COVERED ENTITY.—

9 (i) AFFIRMATIVE OBLIGATIONS OF  
10 BREACHED COVERED ENTITY AND LIABIL-  
11 ITY FOR NOTICE.—If a non-breached cov-  
12 ered entity elects, pursuant to subpara-  
13 graph (B), to provide notice to a group of  
14 individuals under subsection (a), in place  
15 of notification to the same individuals by  
16 the breached covered entity, the breached  
17 covered entity shall provide all required in-  
18 formation about the breach of security to,  
19 and cooperate in all respects with, the non-  
20 breached covered entity so that the notifi-  
21 cation to such individuals is made as re-  
22 quired under subsection (a).

23 (ii) RELIEF OF OBLIGATIONS OF  
24 BREACHED COVERED ENTITY TO PROVIDE  
25 NOTICE TO AFFECTED INDIVIDUALS NOTI-

1 FIED BY NON-BREACHED COVERED ENTI-  
2 TY.—A breached covered entity shall be re-  
3 lieved of its obligation to provide notifica-  
4 tion as required under subsection (a) with  
5 respect to the affected individuals notified  
6 by the non-breached covered entity, pro-  
7 vided that all of the following conditions  
8 have been met—

9 (I) notice from the breached cov-  
10 ered entity to the non-breached cov-  
11 ered entity has been made pursuant to  
12 the requirements of subparagraph  
13 (A);

14 (II) an election to notify certain  
15 affected individuals has been made by  
16 the non-breached covered entity pur-  
17 suant to the requirements of subpara-  
18 graph (B); and

19 (III) the breached covered entity  
20 has fulfilled all of its affirmative obli-  
21 gations under clause (i) of this sub-  
22 paragraph (C).

Page 8, after line 19, insert the following new clause  
(and redesignate succeeding clauses accordingly):

1 (i) The identity of the covered entity  
2 that suffered the breach and, if such cov-  
3 ered entity is also a breached covered enti-  
4 ty providing notice under section 3(b)(1),  
5 the identity of each non-breached covered  
6 entity that did not elect to notify affected  
7 individuals pursuant to section 3(b)(1)(B)  
8 sufficient to show the breached covered en-  
9 tity's commercial relationship to the indi-  
10 vidual receiving notice.

Page 17, after line 19, insert the following new paragraph (and redesignate succeeding paragraphs accordingly):

11 (2) BREACHED COVERED ENTITY.—The term  
12 “breached covered entity” means a covered entity  
13 that has incurred a breach of security affecting data  
14 in electronic form containing personal information of  
15 a non-breached covered entity that has directly con-  
16 tracted the breached covered entity to maintain,  
17 store, or process data in electronic form containing  
18 personal information on behalf of such non-breached  
19 covered entity. For purposes of this definition, the  
20 term “breached covered entity” shall not include a  
21 service provider that is aware of a breach of security  
22 involving data in electronic form containing personal

1 information that is owned or licensed by a covered  
2 entity that connects to or uses a system or network  
3 provided by the service provider for the purpose of  
4 transmitting, routing, or providing intermediate or  
5 transient storage of such data, on a network or sys-  
6 tem.

Page 20, after line 3, insert the following new para-  
graph (and redesignate succeeding paragraphs accord-  
ingly):

7 (8) NON-BREACHED COVERED ENTITY.—The  
8 term “non-breached covered entity” means a covered  
9 entity that has not incurred the breach of security  
10 involving data in electronic form containing personal  
11 information that it owns or licenses but whose data  
12 has been affected by the breach of security incurred  
13 by a breached covered entity it directly contracts to  
14 maintain, store, or process data in electronic form  
15 containing personal information on behalf of the  
16 non-breached covered entity.

