

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.

