§ 75.116 Secretary determination.

(a) Upon receipt of a risk analysis prepared under this subpart, the Secretary will consider the findings and other information contained in the risk analysis to determine whether the data breach caused a reasonable risk for the potential misuse of sensitive personal information. If the Secretary finds that such a reasonable risk does not exist, the Secretary will take no further action under this subpart. However, if the Secretary finds that such a reasonable risk exists, the Secretary will take responsive action as specified in this subpart based on the potential harms to individuals subject to a data breach.

(b) In determining whether the data breach resulted in a reasonable risk for the potential misuse of the compromised sensitive personal information, the Secretary shall consider all factors that the Secretary, in his or her discretion, considers relevant to the decision, including:

(1) The likelihood that the sensitive personal information will or has been made accessible to and usable by unauthorized persons;
(2) Known misuses, if any, of the same or similar sensitive personal information;
(3) Any assessment of the potential harm to the affected individuals provided in the risk analysis;
(4) Whether the credit protection services that VA may offer under 38 U.S.C. 5724 may assist record subjects in avoiding or mitigating the results of

Authority: 38 U.S.C. 501, 5724, 5727