

ORSA Information Sharing Best Practices

Confidential Information Includes:

1. ORSA Summary Report, including any supplemental materials or follow-up questions provided (ORSA)
2. Department Prepared Analysis of ORSA Summary Report (Analysis)

	ORSA Summary Report		Regulator Analysis of ORSA	
	With Other Regulators	With NAIC or Third Party Consultant	With Other Regulators	With NAIC or Third Party Consultant
Financial Analysis	<p>MODEL LAW: ORSA information may be shared with other state regulators (likely through the master agreement), and with federal or international regulators, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA information and has verified in writing the legal authority to maintain confidentiality.</p> <p>BEST PRACTICE: <i>In support of the Lead State framework, encourage the sharing of and reliance on the Lead State's analysis of the ORSA Summary Report as opposed to sharing the full ORSA Summary Report with other regulators. If other regulators require the full ORSA Summary Report, they should work with the Lead State to obtain access.*</i></p>	<p>MODEL LAW: Prior to sharing ORSA information with the NAIC or a third party consultant, the state shall enter into a written agreement governing the sharing and use of information provided pursuant to conditions outlined in the law. In addition, prior to sharing ORSA information with a third party consultant, the model law requires the state to obtain the written consent of the insurer.</p> <p>BEST PRACTICE: <i>In support of the Lead State framework, other states should defer to the Lead State regarding the use of external resources in reviewing and analyzing the ORSA Summary Report. If the Lead State elects to utilize the services of the NAIC or a third party consultant in this regard, a written agreement should be completed in accordance with the provisions outlined in the model law. In addition, if utilizing the services of a third party consultant, the model law requires written consent from the insurer before providing access to the ORSA Summary Report.</i></p>	<p>MODEL LAW: ORSA analysis and review documentation should be considered the Department's own work product. However, regulators should exercise due care and professional judgment in determining the level of detail to include in such documentation as the information is highly sensitive and protected by the ORSA confidentiality laws in addition to laws that protect Department workpapers. This information may be shared with other state regulators (likely through the master agreement) in accordance with each department's existing policies for confidential workpapers. It may also be shared with federal or international regulators if the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA information and has verified in writing the legal authority to maintain confidentiality.</p> <p>BEST PRACTICE: <i>Follow existing department policies in providing access to confidential workpapers and protecting the confidential status of workpapers received from other departments.</i></p>	<p>MODEL LAW: ORSA analysis and review documentation should be considered the Department's own work product. However, regulators should exercise due care and professional judgment in determining the level of detail to include in such documentation as the information is highly sensitive and protected by the ORSA confidentiality laws in addition to laws that protect Department workpapers. This information can be shared with the NAIC or third party consultants pursuant to a written agreement and in accordance with each department's existing policies for confidential workpapers.**</p> <p>BEST PRACTICE: <i>Follow existing department policies in providing access to confidential workpapers and protecting the confidential status of workpapers received from other departments.</i></p>
Coordinated Examinations	<p>MODEL LAW: ORSA information may be shared with other state regulators (likely through the master agreement), and with federal or international regulators, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA information and has verified in writing the legal authority to maintain confidentiality.</p> <p>BEST PRACTICE: <i>In support of the Lead State framework, encourage reliance on the Lead State's analysis and examination of the ORSA Summary Report by including only review documentation in the coordinated examination file and not including the full ORSA Summary Report. If other regulators require the full ORSA Summary Report, they should work with the Lead State to obtain access. However, states would still be discouraged from including the full ORSA Summary Report or substantial sections thereof in the coordinated examination file.*</i></p>	<p>MODEL LAW: There may be some question about whether the examination law or ORSA law will apply to sharing ORSA information during an examination. The ORSA model law requires consent prior to sharing ORSA information with a third party consultant. In any event, the state should enter into a written agreement governing the sharing and use of information before sharing the ORSA with the NAIC or a third-party consultant.</p> <p>BEST PRACTICE: <i>In support of the Lead State framework, encourage reliance by the other states and their consultants on the Lead State's analysis and examination of the ORSA Summary Report by including only review documentation in the coordinated examination file and not including the full ORSA Summary Report. If other states involved in the coordinated examination require the full ORSA Summary Report, they should work with the Lead State to obtain access (including receiving written consent to share the report with a third party contractor). However, states would still be discouraged from including the full ORSA Summary Report or substantial sections thereof in the coordinated examination file.</i></p>	<p>MODEL LAW: ORSA analysis and review documentation should be considered the Department's own work product. However, regulators should exercise due care and professional judgment in determining the level of detail to include in such documentation as the information is highly sensitive and protected by the ORSA confidentiality laws in addition to laws that protect Department workpapers. This information may be shared with other state regulators (likely through the master agreement) in accordance with each department's existing policies for confidential workpapers. It may also be shared with federal or international regulators if the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA information and has verified in writing the legal authority to maintain confidentiality.</p> <p>BEST PRACTICE: <i>Follow existing department policies in providing access to confidential workpapers and protecting the confidential status of workpapers received from other departments.</i></p>	<p>MODEL LAW: ORSA analysis and review documentation should be considered the Department's own work product. However, regulators should exercise due care and professional judgment in determining the level of detail to include in such documentation as the information is highly sensitive and protected by the ORSA confidentiality laws in addition to laws that protect Department workpapers. This information can be shared with the NAIC or third party consultants pursuant to a written agreement and in accordance with each department's existing policies for confidential workpapers.**</p> <p>BEST PRACTICE: <i>Follow existing department policies in providing access to confidential workpapers and protecting the confidential status of workpapers received from other departments. Notify the insurer when regulator analysis of ORSA is shared with a third party consultant pursuant to a coordinated exam.</i></p>

* This chart assumes that a receiving state has adopted the ORSA model act. To date, not all states have not done so. Therefore, the providing state should verify that the receiving state has adopted the confidentiality provisions of the ORSA model act or another statute that affords similar confidentiality protection for ORSA information before sharing related work products. If concerns regarding a states ability to protect the confidentiality of ORSA Summary Reports are identified, the Department should consider the following options in providing access to ORSA information: 1) Grant trade secret protection to the whole report before sharing; 2) Limit access to the report by providing a read-only/copy prevented version; 3) Limit access to the report to on-site viewing; 4) Prohibit disclosure of the report in its entirety.

** There may be some question about whether the third-party consultant consent will apply to workpapers that merely "copy and paste" from the ORSA Summary Report and is not the department's own analysis and work product.

Note: Because state confidentiality laws may differ from the Model Act, the providing state should determine whether its laws require protections beyond those listed here.