

Pay-to-Play Spotlight

July 2009

New Mexico Adds Pay-to-Play Rules

On May 26, 2009, New Mexico's State Investment Council adopted a Transparency and Disclosure Policy that contains a pre- and post-contract pay-to-play contribution prohibition. The prohibition applies to recipients of investments and contracts from the State Investment Council, the Private Equity Investment Advisory Committee and the State Investment Office. The new rule as written applies to the following: "the firm, individual, principals, agents, employees and family members." The contribution ban also applies to third-party sales agents.

In addition to the pay-to-play contribution ban, the new policy also requires disclosure of certain contributions and other information before investments are made or contracts let. Further, the policy bans the use of placement agents in investment transactions with the State Investment Office.

Finally, the new policy also bans gifts from recipients of investments and contracts to "any elected or appointed officeholder (directly or indirectly), or any official or employee of the State of New Mexico in connection with the investment or contract."

Colorado Court Enjoins Pay-to-Play Law

On June 23, 2009, a state district court temporarily enjoined Colorado's Amendment 54, a pay-to-play ballot measure that became effective on December 31, 2008. As long as the temporary injunction remains in effect, the contribution prohibitions contained in Amendment 54 are inapplicable. The state has yet to decide whether to appeal this ruling or to try the challenge on its merits since a written order has yet to be issued.

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Further, although the state had issued a *Notice of Proposed Rulemaking* and was to have a hearing on July 8 regarding proposed pay-to-play rules, the state has moved the hearing to July 22 in order to allow more time for the Court to issue the written order.