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Dedicated to Regional Excellence

TO: Clerks and Managers/Administrators – LRCOG Member Governments

From: Jean Klein

Subject: Attorney General's Interpretation of EO124 and 142

Date: August 7, 2020

On July 29, 2020 the LRCOG sent out an article which provided some interpretation of the Executive Order 124 and Executive Order 142 repayments plans for customers who accrued a balance due during the period March 31, 2020 through July 29, 2020. The information in that article was based on data from the UNC School of Government. Recognizing that the expiration of the "grace" period established by the EO's was getting ready to expire, the SOG staff pulled together a webinar which was very well done and very informative and we based our message to you on that.

On July 30, 2020 – the first day following the expiration of the "grace period" – the Attorney General's Office released its interpretation of the repayment plans and late payments. Some of the interpretations that the AG's Office is making are different.

It is important for you to know that the AG's Office is the deciding factor in how to handle repayments and charging of late fees. Attached to this email you will find the layout of those differences in a Blog Post from the School of Government issued yesterday afternoon. A quick summary of the AG's interpretations include (these are from the Blogpost mentioned below):

NOT ALLOWED: Assessing late fees and interest charges for nonpayment of payment plan installment. Because a payment plan is a separate contractual arrangement between the customer and the utility, a local government typically imposes additional late fees and/or interest charges on any payment plan installments that are not paid on time. The AG's Office has deemed that doing this would violate the prohibition in the EO's against charging interest or late fees on arrearages that accrued between March 31 and July 29, 2020.

Member Governments

BLADEN COUNTY

Bladenboro • Clarkton • Dublin
East Arcadia • Elizabethtown
Tar Heel • White Lake

HOKE COUNTY

Raeford

RICHMOND COUNTY

Dobbins Heights • Ellerbe • Hamlet
Hoffman • Norman
Rockingham

SCOTLAND COUNTY

Gibson • Laurinburg • Wagram

ROBESON COUNTY

Fairmont • Lumber Bridge • Lumberton
Marietta • Matton • McDonald
Orum • Parkton • Pembroke
Proctorville • Red Springs • Rennert
Rowland • St. Pauls

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NOT ALLOWED: Voiding payment plans for nonpayment of an installment. It also is standard practice for a local government to make the continued validity of a payment plan conditioned on the customer making each installment payment. Most plans are voided if an installment payment is missed, resulting in immediate disconnection if the full amount owed under the payment plan is not paid. (This is sometimes referred to as an acceleration clause.) The AG’s guidance indicates that doing this “would amount to a late fee on the arrearage, which is prohibited [by the EO 124/142]” and “would be inconsistent with the requirement in [EO 124/142] that repayment plans have a duration of at least six months.”

As a practical matter, what this means is that if a customer misses a payment plan installment payment, the utility may disconnect service (according to the terms in the payment plan). The utility must reconnect service, however, if the customer makes that month’s installment payment. The utility may not condition reconnection on the payment of the full amount owed under the payment plan. And it may not otherwise compel early pay off of the remaining amounts owed.

NOT ALLOWED: Requiring a down payment on the amount owed as a condition of the payment plan. Local governments often require a customer to pay a certain percentage of the total amount owed up front as a condition of being able to finance the rest through a payment plan. The AG’s Office has determined that doing so is not consistent with a layperson’s understanding of what constitutes a reasonable payment arrangement. (The AG’s Office also stated that it will be looking to the NC Utilities Commission for guidance in how to interpret EO 124/142. In its July 29, 2020 Order, the NCUC similarly prohibited front loading installment payments.)

A customer may choose to make a down payment on the total amount owed, pay off the amount owed early, or otherwise negotiate a different payment arrangement with the local government utility. According to the AG’s guidance, though, the default is that the utility either require “equal, fixed monthly installments” or “a pre-agreed fixed percentage of each monthly bill added to current charges.”

NOT ALLOWED: Reporting a customer to a credit reporting agency if the customer is in compliance with an established payment plan and is current on bills that are not covered by the EOs. The AG’s guidance states that “[u]tilities may not report a customer to a credit reporting agency if the customer is in compliance with an established payment plan and is current on bills that are not covered by the [EO 124/142].” Doing so, according to the AG, would be a “prohibited fee” under EO 124/142. Although the AG’s guidance does not state this specifically, presumably the same prohibition would apply to suing the customer for the amounts owed and/or submitting the amounts owed to the state’s debt set-off program. This prohibition is consistent with common practice. Presumably, however, a utility may report a customer to a credit reporting agency, if that customer fails to comply with the utility’s payment plan or becomes delinquent on new charges.

NOT ALLOWED: Requiring customer to pay off full amount owed under payment plan if customer terminates service and asks to reestablish it at a new location. Another common, although not universal, practice is for a local government utility to require that a customer pay off any outstanding balance in order to terminate service at one location and establish it at a different location in the utility’s service area. The AG’s guidance states that this practice is prohibited with respect to payment plans required by EO 124/142. A utility must allow a customer to transfer

his/her EO 124/142 payment plan balance from one location to another in the utility's service area. Note, however, that the utility may continue to require full payment of delinquent amounts that occurred before March 31 or after July 29, 2020, as a condition of the account transfer.

We strongly encourage you to read this post and if you have any questions, please contact us and we will work with you to get an answer.

The Link to the blog post is:

https://canons.sog.unc.edu/now-what-utility-billing-and-collections-post-executive-orders-124-142/#utm_source=rss&utm_medium=rss&utm_campaign=now-what-utility-billing-and-collections-post-executive-orders-124-142