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Options for Managing Spending Include Extensions, Carryovers

By Theresa Defino

The University of Texas Health Sciences Center's (UTHSC) recent False Claims Act agreement with the Department of Justice (DOJ) is just the latest FCA settlement to ensnare a research institution. But the settlement is far from the norm, as it doesn't deal with time-and-effort issues (see story, p. 1).

In this case, DOJ alleged that a genetics center at UTHSC purchased more than $1.2 million in equipment near the end of a grant, and then purposely cancelled the shipment to earn a credit it could spend later.

Edward T. Waters, managing partner in the Washington, D.C., law office of Feldesman Tucker Leifer Fidell LLP, told *RRC* the "scenario" described in the settlement is a first for him, and something that awardees have various options to avoid.

To Waters, it appears UTHSC was "intentionally ordering things knowing [it was] going to get a credit solely to get around what's called the period of availability of funds," which he found somewhat stunning. "I think most people are going to look at this and say...'You've got to be kidding me. You thought that was okay?'" he said.

As Waters notes, federal grants each have "a period of time that you have to obligate the money, and obligation means you either spend it or you've entered into a binding contract to spend it. You may have a five-year grant period, a one-year budget period, and you buy the super-duper microscope at the end of the first year, recognizing there's four more of federal support, so you're going to use the microscope on this grant program for the four more years. I don't see anything wrong with that," said Waters. "But if at the end of the five-year period, you buy the super-duper microscope with one month left," the justification begins to look like, "We wanted to spend money and then we'll...keep the microscope.'"

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