



**TO:** University Council

**FROM:** Karen Glover, Associate Vice President/Comptroller  
Kay Lennon-McGrew, Assistant University Counsel

**DATE:** November 2, 2020

**RE:** Legislative Mandates Restricting the Use of Federal Grant Funds Policy  
Electronic Signature Policy

---

## **I. Introduction**

The Legislative Mandates Restricting the Use of Federal Grant Funds was previously approved through the emergency policy process on June 27, 2020. The Electronic Signature Policy establishes when an electronic signature of a University employee may be utilized to bind the University in the course of conducting official business on behalf of the University. The public comment period for both policies began October 15, 2020 and concluded November 1, 2020.

## **II. Comments Received**

No comments were made on the Policy on Legislative Mandates Restricting the Use of Federal Grant Funds. Two comments supporting the Electronic Signature Policy were received.

## **III. Legal Review of the Proposed Policies**

The Legislative Mandates Restricting the Use of Federal Grant Funds Policy complies with the requirements mandated under the Further Consolidated Appropriations Act 2020 (Public Law 116-94). The Electronic Signature Policy complies with the Tennessee Uniform Electronic Transactions Act (T.C.A. § 47-10-101, et. seq), the Tennessee Public Records Act and the federal law related to Electronic Signatures in Global and National Commerce (15 U.S.C. § 7001, et seq.).



Legislative Mandates Restricting the Use of Federal Grant Funds	
Responsible Official: Chief Financial Officer	Responsible Office: Business and Finance

### Policy Purpose

The purpose of this policy is to address the requirements mandated by the Further Consolidated Appropriations Act, 2020 (Public Law 116-94), signed into law on December 20, 2019, which provides funding to the Health Resources and Services Administration (HRSA) for the fiscal year ending September 30, 2020. The intent of this policy is to provide information on statutory provisions that limit the use of funds on HRSA grants and cooperative agreements. Legislative mandates remain in effect until a new appropriation bill is passed setting a new list of requirements.

### Policy Statement

East Tennessee State University (ETSU) shall adhere to Health and Human Resources legislative mandate(s) through policy creation, implementation, and monitoring. The legislative mandate is outlined with links to ETSU specific policies.

The current Legislative Mandates, which remain in effect until a new Appropriations Act is passed, include the following:

1) Salary Limitation – ETSU shall not use federal grant funds to pay the salary of an individual at a rate in excess of Executive Level II. The Executive Level II salary is currently set at \$197,300 as of January 1, 2020.

2) Gun Control – ETSU shall not use federal grant funds to advocate or promote gun control.  
[ETSU Anti-Lobbying](#)

3) Anti-Lobbying

A. ETSU shall not use federal grant funds, other than for normal and recognized executive legislative relationships, for the following:

i. For publicity or propaganda purposes;

ii. For the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any State or local legislature or legislative body, except in presentation to the Congress or any State or local legislature itself, or designed to support or defeat any proposed or

pending regulation, administrative action, or order issued by the executive branch of any State or local government, except in presentation to the executive branch of any State or local government itself.

- B. ETSU shall not use federal grant funds to pay the salary or expenses of any employee or agent of ETSU for activities designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
- C. The prohibitions in subsections A and B include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.

#### ETSU Anti-Lobbying

4) Acknowledgment of Federal Funding - When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, ETSU shall clearly state:

- A) the percentage of the total costs of the program or project which will be financed with Federal money;
- B) the dollar amount of Federal funds for the project or program; and
- C) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources."

#### (5) Restriction on Abortions

- (a) None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for any abortion.
- (b) None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for health benefits coverage that includes coverage of abortion.
- (c) The term "health benefits coverage" means the package of services covered by a managed care provider or organization pursuant to a contract or other arrangement."

#### (6) Exceptions to Restriction on Abortions (Section 507)

- (a) The limitations established in the preceding section shall not apply to an abortion –
  - (1) if the pregnancy is the result of an act of rape or incest; or

(2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

(b) Nothing in the preceding section shall be construed as prohibiting the expenditure by a State, locality, entity, or private person of State, local, or private funds (other than a State's or locality's contribution of Medicaid matching funds).

(c) Nothing in the preceding section shall be construed as restricting the ability of any managed care provider from offering abortion coverage or the ability of a State or locality to contract separately with such a provider for such coverage with State funds (other than a State's or locality's contribution of Medicaid matching funds).

Tennessee Code Annotated § 56-26-134 ([Tenn. Code Ann. § 56-26-134](#)) states "No health care plan required to be established in this state through an exchange pursuant to federal health care reform legislation enacted by the 111th Congress shall offer coverage for abortion services. For purposes of this section, "abortion" has the same meaning as defined in § 39-15-201."

(d)

(1) None of the funds made available in this Act may be made available to a Federal agency or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.

(2) In this subsection, the term "health care entity" includes an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan."

7) Ban on Funding of Human Embryo Research – ETSU shall not use federal grant funds for (i) the creation of a human embryo or embryos for research purposes; or (ii) research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury or death greater than that allowed for research on fetuses in utero under 45 CFR 46.204(b) and section 498(b) of the Public Health Service Act ([42 U.S.C. 289g\(b\)](#)).

#### [ETSU Research Compliance](#)

#### (8) Limitation on Use of Funds for Promotion of Legalization of Controlled Substances

(a) ETSU shall not use federal grant funds to promote the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive-congressional communications.

(b) The limitation in subsection (a) shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance or that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

## [ETSU Anti-Lobbying](#)

### (9) Restriction of Pornography on Computer Networks

(a) ETSU shall not use federal grant funds to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography.

(b) Nothing in subsection (a) shall limit the use of funds necessary for any federal, state, tribal, or local law enforcement agency or any other entity carrying out criminal investigations, prosecution, or adjudication activities.

## [ETSU Restriction of Pornography on Computer Networks](#)

(10) Restrictions on Funding ACORN – ETSU shall not provide any federal funds to the Association of Community Organizations for Reform Now (ACORN), or any of its affiliates, subsidiaries, allied organizations, or successors.

(11) Restriction on Distribution of Sterile Needles – ETSU shall not use federal funds to purchase sterile needles or syringes for the hypodermic injection of any illegal drug: Provided, That such limitation does not apply to the use of funds for elements of a program other than making such purchases if the relevant State or local health department, in consultation with the Centers for Disease Control and Prevention, determines that the State or local jurisdiction, as applicable, is experiencing, or is at risk for, a significant increase in hepatitis infections or an HIV outbreak due to injection drug use, and such program is operating in accordance with State and local law. ETSU shall comply with Public Chapter No. 413 enacted May 18, 2017.

## [Tennessee Public Chapter No. 413](#)

### (12) Confidentiality Agreements

(a) ETSU shall not require its employees or contractors seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The limitation in subsection (a) shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

## [ETSU Contract Management Office of Research and Sponsored Programs](#)

### [ETSU Reporting Fraud and Abuse](#)

## Definitions

**Salary Limitation:** Executive compensation for individuals paid through federal funding that is established through federal regulations.

**Gun Control:** The act of promoting or advocating for gun rights.

**Lobbying:** The act of advocacy with intention of influencing decisions made by government officials.

**Notice of Funding:** The process of acknowledging federal funding in writing for all activities associated with federal funds.

**Abortion:** The deliberate termination of human pregnancy.

**Embryo:** an unborn human fetus

**Controlled Substance:** Substances regulated under 21 U.S. Code § 811. Authority and criteria for classification of substances

**Pornography:** Printed or visual material containing the explicit description or display of sexual organs or activity intended to stimulate erotic rather than aesthetic or emotional feelings. (Oxford Dictionary).

**Computer Network:** A group of computer systems and other compiling hardware devices that are linked together through communication channels to facilitate communication and resource-sharing among a wide-range of users ([www.techopedia.com](http://www.techopedia.com)).

**ACORN:** Association of Community Organizations for Reform Now.

**Sterile Needle:** Sterile devices used to inject solutions into or withdraw secretions from the body ([www.encyclopedia.com](http://www.encyclopedia.com))

#### Policy History

Effective Date:

Revision Date:

#### Procedure (s)

### 1. Review and Updates of this Policy and Procedure (P&P)

The Office of Research and Sponsored Programs shall review this Policy and Procedure upon the passage of a new HHS Appropriations Act or issuance of HRSA guidance regarding the Legislative Mandates, and shall ensure this P&P is updated as necessary. As Appropriations Acts are generally enacted annually, this P&P will generally require annual review. Any modifications to this Policy and Procedure will require review and approval by ETSU's Board of Trustees.

### 2. Legislative Mandates Training

The Office of Research and Sponsored Programs shall ensure that the Principle Investigators receive training regarding the Legislative Mandates and the procedures set forth in this P&P.

### 3. Compliance Program

This Legislative Mandates P&P will be incorporated into ETSU's Compliance Program.

### 4. Financial Management

The Chief Financial Officer (“CFO”) shall ensure that ETSU’s financial management systems and procedures are structured to ensure that no federal grant funds are used for purposes that are impermissible under this Policy and Procedures. As necessary, the CFO may establish cost centers/accounts for the accumulation and segregation of such costs. The CFO may use any practical means to do so, consistent with ETSU’s financial management policies (including by establishing appropriate cost centers and associated accounts to accumulate and segregate the following costs where necessary). Through this process, ETSU’s will adhere to the Legislative Mandates restrictions on use of federal funds for:

- i. “Lobbying” or other “advocacy” activities that may meet the definitions of the applicable Legislative Mandate sections (as well as 45 C.F.R. § 75.450) (including certain advocacy relating to gun control, legalization of controlled substances, consumer products, and other advocacy);
- ii. Payment of a salary (or associated fringe benefits) at a rate in excess of the Executive Level II pay scale;
- iii. Abortions or health benefits coverage that includes coverage of abortion (this restriction shall not apply to abortions (or health benefits coverage of abortions) that fall within the Hyde Amendment exceptions);
- iv. Activities related to distribution of sterile needles for hypodermic injection of any illegal drug;
- v. Human embryo research; and
- vi. Business transactions with (including the funding of) the Association of Community Organizations for Reform Now (“ACORN”).

#### **Acknowledgment of Federal Funding**

All requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with federal money, will be reviewed and approved by the ETSU’s Procurement and Contract Services Department. The Procurement and Contract Services Department shall ensure that such written material include the following:

*“This publication is issued in furtherance of ETSU’s federally funded health center project. This year, ETSU’s health center project received \$ \_\_\_\_ of federal assistance, which is estimated as constituting \_\_\_\_ percent of project costs. Of total project costs for this year, ETSU estimates \_\_\_\_ percent will be financed with nongovernmental sources.”*

#### **5. Restriction of Pornography on Computer Networks**

ETSU’s computer network is and shall remain configured to block the viewing, downloading, and exchange of pornography. Information Technology Services shall ensure appropriate information technology assets and support are made available to ensure continued compliance.

#### **6. Confidentiality Agreements**

ETSU's Grant Accounting Department and/or Office of University Counsel shall review any and all confidentiality agreements entered into between ETSU and its employees and/or contractors and, prior to execution, shall confirm that such agreements do not prohibit or otherwise restrict the employee/contractor from lawfully reporting waste, fraud, or abuse to (i) federal law enforcement or other federal investigative personnel, or (ii) other representatives of federal departments and agencies.

**Procedure History**

Effective Date:

Revision Date:

**Related Form(s)**

**Scope and Applicability**

Check those that apply to this policy and identify proposed sub-category.

	Governance	
	Academic	
	Students	
	Employment	
	Information Technology	
	Health and Safety	
X	Business and Finance	
	Facilities and Operations	
	Advancement	





Use of Electronic Signatures	
Responsible Official: Chief Financial Officer for Business and Finance	Responsible Office: Business and Finance

### Policy Purpose

The purpose of this policy is to establish when an electronic signature may replace a written signature to bind the University when conducting official business on behalf of the University.

### Policy Statement

To the extent permitted by state and federal law, it is the policy of East Tennessee State University to recognize the validity of electronic signatures for contracts and other legally binding documents when an approved electronic signature method is utilized and each party has agreed to conduct transactions by electronic means.

### Definitions

Approved Electronic Signature method	A method that has been approved in accordance with this policy and applicable state and federal laws. The inventory of approved electronic signature methods will specify the form of the electronic signature, the systems and procedures used with the electronic signature, and the significance of the use of the electronic signature, whenever possible.
Certificate	An electronic document used to identify an individual, server, a company, or some other entity and to associate that identity with a public key. A certificate provides generally recognized proof of an entity's identity.
Electronic	The technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
Electronic signature	An electronic symbol, or process, attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. An electronic signature must be attributable (or traceable) to a person who has the intent to sign the record. Best practice for electronic signatures will include the use of adequate security and authentication measures that are contained in the method of capturing the electronic transaction. The recipient of the transaction

must be able to permanently retain an electronic record of the transaction at the time of receipt.

Electronic transaction	A transaction conducted or performed, in whole or in part, by electronic means or electronic records.
Private key	An encryption/decryption key known only to the party or parties that exchange messages. In traditional private key cryptography, a key is shared by the parties so that each can encrypt and decrypt messages.
Public key	A value provided by some designated authority as a key that, combined with a "private key" derived from the public key, can be used to effectively encrypt messages and digital signatures.
Public-key infrastructure (PKI)	A form of information encryption that uses certificates to prevent individuals from impersonating those who are authorized to electronically sign an electronic document.

#### Authority

T.C.A. § 47-10-101, et.seq. – Tennessee Uniform Electronic Transactions Act  
T.C.A. § 10-7-101, et.seq. – Tennessee Public Records Act  
15 U.S.C. § 7001, et seq. - Electronic Signatures in Global and National Commerce

#### Policy History

Effective Date:

Revision Date:

Previous policy for reference: <https://www.etsu.edu/bf/documents/fp/39.pdf>

#### Procedure (s)

##### **I. Use of Electronic Signature**

###### **A. Mutual Agreement by the Parties**

1. This policy applies to transactions where each party has agreed to conduct the transaction by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined by the conduct of the parties and the context and circumstances surrounding the transaction.

2. This policy does not require the use of electronic or digital signatures. Electronic signatures may not be used when an applicable law, regulation, or University policy or process specifically requires a handwritten signature.

**B. Signature Required by Law**

When a signature is required by law, that signature requirement is satisfied when the electronic record has associated with it an electronic signature using an approved electronic signature method.

**C. Signatory Authority**

1. The signing of a record using an approved electronic signature method does not necessarily mean that the record has been signed by a person authorized to sign or approve that record.
2. Each person with authority to sign documents representing the University must have approval granting this authority and intent, describing the scope and limits of the signatory's authority.
3. Information Technology Services Department will inventory these approvals and verify the inventory yearly. This inventory will be provided to any University employee upon request to verify they are authorized to sign on behalf of the University and for what purpose.

**D. Electronic Record**

1. If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver a signed document to another person, the requirement is satisfied if the information is provided, sent, or delivered in an electronic record capable of retention by the recipient at the time of receipt.
2. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to permanently retain the electronic record containing the signature.

**II. Approval of Electronic Signature Methods**

- A. In determining whether to approve an electronic signature method, consideration will be given to the systems and procedures associated with using that electronic signature, and whether the use of the electronic signature is at least as reliable as the existing method being used.
- B. An inventory of all approved electronic signature methods shall be maintained by Information Technology Services Department. The inventory of approved electronic signature methods will be maintained and amended only after a review of the electronic

signature method by the Information Technology Services Department in consultation with the Office of University Counsel.

- C. If approved electronic signature methods require the use of encryption technology that uses public or private key infrastructure and/or certificates, the Information Technology Services Department will be responsible for the administration of such public or private keys and certificates
- D. In the event that it is determined that an approved electronic signature method is no longer trustworthy, the Information Technology Services Department in consultation with the Office of University Counsel shall consider removing the method from the inventory of approved electronic signature methods. If there is an on-going need for electronic signatures to continue by a previously approved but since revoked method, the Information Technology Services Department in consultation with the Office of University Counsel may permit such signatures to be accepted until such time as steps have been completed to ensure appropriate electronic signatures are obtained by an approved electronic signature method.

### **III. Non-Legal Internal Processes**

- A. This policy does not apply to internal administrative approval or acknowledgement processes or internal forms requiring departmental or supervisor approval, an employee's signature, or a student's consent for internal control purposes (e.g., internal routing forms, travel reimbursements, request forms, release of educational records, etc.).
- B. Internal administrative or acknowledgement approvals may be obtained by electronic or digital means if departments adopt processes to ensure they maintain appropriate documentation of the approvals and ensure that any system or process utilized for an electronic signature does not result in institutional data being shared or stored inappropriately without proper safeguards.
- C. Internal approval or acknowledgement processes that involve receipt of cash are *not* eligible for electronic signature.

### **IV. Sanctions**

- A. Any individual that makes inappropriate or illegal use of electronic signatures and/or records is subject to sanctions up to and including dismissal, suspension, and criminal prosecution.
- B. This policy does not confer signature authority on any party.

#### Procedure History

Effective Date:

Revision Date:

Related Form(s)