

FILED WITH LRC  
TIME: 3:30 PM  
APR 30 2024  
Emily B Caudill  
REGULATIONS COMPILER

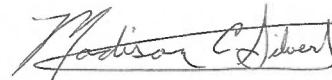
**STATEMENT OF EMERGENCY**

**13 KAR 2:120E**

This emergency administrative regulation is being promulgated to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute, specifically KRS 164.092(10) and SB 191 (2024 Regular Session), signed into law on April 17, 2024, and containing an emergency clause. In particular, Section 4 of SB 191 directs the Council on Postsecondary Education to make certain changes to the operation of the performance funding model created in KRS 164.092 that impact the 2024-2025 funding distribution. KRS 164.092(10)(a) requires that by May 1<sup>st</sup> of each year, the Council on Postsecondary Education certify to the Office of State Budget Director the amount of performance funding allocations to be distributed to each public university and KCTCS institution for the forthcoming fiscal year. All required changes require amendments to 13 KAR 2:120 and 13 KAR 2:130 and the normal administrative regulation amendment process would not conclude in nearly enough time for those changes to become effective for the 2024-2025 funding distribution. The emergency administrative regulation will be replaced by an ordinary administrative regulation and the ordinary administrative regulation is identical to this emergency administrative regulation.



Andy Beshear, Governor



Madison C. Silvert, Chair  
Council on Postsecondary Education

1 GENERAL GOVERNMENT CABINET

2 Council on Postsecondary Education

3 (Emergency Amendment)

4 **13 KAR 2:120E. Comprehensive funding model for the allocation of state general fund**  
5 **appropriations to public universities.**

6 RELATES TO: KRS 48.600-48.630, 164.001, 164.092

7 STATUTORY AUTHORITY: KRS 164.092(12)

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.092(12) requires the Council on  
9 Postsecondary Education to promulgate an administrative regulation to implement a  
10 comprehensive funding model for the public postsecondary education system. This administrative  
11 regulation establishes the formula by which general fund appropriations shall be distributed in the  
12 public university sector.

13 Section 1. Definitions.

14 (1) "Academic year" means July 1st through June 30th and all terms completed therein.

15 (2) "Bachelor's degrees" means the total number of bachelor's degrees awarded during the  
16 academic year, including degrees conferred to resident and non-resident students.

17 (3) "Comprehensive university" is defined by KRS 164.001(7).

18 (4) "Council" is defined by KRS 164.092(1)(c).

19 (5) "FAFSA form" means the free application for federal student aid form completed by  
20 students to determine eligibility to receive federal student financial aid.

1        (6) "First-generation college students" means students who report on the FAFSA form that  
2 neither parent has earned a college degree or credential, or one (1) parent if the other parent's  
3 education level is unknown.

4        ~~(7)~~~~(5)~~ "Formula base amount" is defined by KRS 164.092(1)(e) and includes a deduction for  
5 mandated programs.

6        ~~(8)~~~~(6)~~ "Hold-harmless provision" is defined by KRS 164.092(1)(f).

7        ~~(9)~~~~(7)~~ "Institution" means a public university.

8        ~~(10)~~~~(8)~~ "Low-income student" means a student who received a Federal Pell Grant after the  
9 2005-2006 academic year for attendance at the institution from which the student received a  
10 bachelor's degree.

11        ~~(11)~~~~(9)~~ "Mandated program" means a research or public service activity not integral to the  
12 instructional mission of the institution that is:

13        (a) Funded with greater than \$450,000 of state appropriations at research universities and  
14 \$200,000 at comprehensive universities; and

15        (b) Directed by statute, resolution, executive branch budget bill, executive order, or other legal  
16 mandate.

17        (12) "Non-traditional age students" is defined in KRS 164.092(1)(k).

18        ~~(13)~~~~(10)~~ "Non-resident student" means a student who does not meet the requirements for  
19 Kentucky residency for purposes of tuition set forth in 13 KAR 2:045.

20        ~~(14)~~~~(11)~~ "Research university" is defined by KRS 164.092(1)~~(m)~~~~(j)~~.

21        ~~(15)~~~~(12)~~ "Resident student" means a student certified as a Kentucky resident for purposes of  
22 tuition pursuant to 13 KAR 2:045 and any non-resident student attending an institution under a  
23 state tuition reciprocity agreement entered into by the council.

1        ~~(16)~~~~(13)~~ "Small school adjustment" means a one (1)-time calculation made using the formula  
2 base amounts in 2017-2018 and equals:

3        (a) For a research university, ten (10) percent of the respective formula base amount for each  
4 institution; ~~and~~

5        (b) For a comprehensive university, ten (10) percent of the total formula base amount for all  
6 comprehensive universities divided by six (6); ~~and~~~~(-)~~

7        (c) For institutions that have a hold-harmless amount in fiscal year 2023-2024, an additional  
8 amount equaling the institution's 2023-2024 hold-harmless amount.

9        ~~(17)~~~~(14)~~ "STEM+H degrees" means degrees in the fields of science, technology, engineering,  
10 math, and health sciences as determined by the council.

11        ~~(18)~~~~(15)~~ "Stop-loss provision" is defined by KRS 164.092(1)~~(n)~~~~(k)~~.

12        ~~(19)~~~~(16)~~ "Underrepresented minority students" means students who categorize themselves as  
13 Hispanic or Latino, American Indian or Alaska Native, Black or African American, Native  
14 Hawaiian or Other Pacific Islander, or two (2) or more races.

15        (20) "Underrepresented students" is defined by Senate Bill 191, Section 4(1) of the 2024  
16 Regular Session.

17        ~~(21)~~ ~~(17)~~ "University allocable resources" is defined by KRS 164.092(1)~~(o)~~~~(t)~~.

18        Section 2. Allocable Resources. The council shall determine total university allocable resources  
19 for any given year by calculating each institution's formula base amount and subtracting the small  
20 school adjustment and any amount protected by a hold-harmless provision. These amounts shall  
21 then be combined along with any applicable increase or decrease in general fund appropriation.

22        Section 3. Metric Weighting. For purposes of Sections 5, 6, and 7 of this administrative  
23 regulation, bachelor's degrees, student progression, earned credit hours, facilities' square feet,



1 instruction and student services costs, and full-time equivalent student enrollment shall be  
2 calculated with differential weights for research and comprehensive universities in accordance  
3 with the Public University Funding Model Metric Weighting Chart.

4 Section 4. Three (3)-year Rolling Average. Each metric shall be calculated by averaging the  
5 most recent three (3) years of finalized data.

6 Section 5. Student Success Outcomes. Forty (40)~~Thirty five (35)~~ percent of total university  
7 allocable resources shall be certified for distribution to each institution based on its share of the  
8 total volume of student success outcomes related to bachelor's degree production and student  
9 progression as established in KRS 164.092(6)(a)1. through 5., and in the following denominations:

10 (1) Nine (9) percent based on the ~~normalized~~ bachelor's degrees awarded in an academic year  
11 as described in the Public University Sector Funding Model Formula Chart;

12 (2) Five (5) percent based on STEM+H bachelor's degrees awarded in an academic year;

13 ~~[(3) Three (3) percent based on bachelor's degrees awarded to underrepresented minority  
14 students in an academic year;~~

15 ~~(3)~~[(4) Nine and a half (9.5) ~~[(3) Three (3)]~~ percent based on bachelor's degrees awarded to low-  
16 income students in an academic year;

17 ~~(4)~~[(5) Three (3) percent based on the number of full-time and part-time undergraduate  
18 students reaching or surpassing thirty (30) cumulative earned credit hours in any term completed  
19 from August 1st to July 31st;

20 ~~(5)~~[(6) Five (5) percent based on the number of full-time and part-time undergraduate students  
21 reaching or surpassing sixty (60) cumulative earned credit hours in any term completed from  
22 August 1st to July 31st; ~~[and]~~

1        ~~(6)~~~~(7)~~ Seven (7) percent based on the number of full-time and part-time undergraduate  
2 students reaching or surpassing ninety (90) cumulative earned credit hours in any term completed  
3 from August 1st to July 31<sup>st</sup>; ~~and~~[-]

4        ~~(7)~~~~(8)~~ One and a half (1.5) percent based on the number of bachelor's degrees awarded to  
5 underrepresented students in an academic year.

6        Section 6. Student Credit Hour Production. Thirty (30)~~Thirty-five (35)~~ percent of total  
7 university allocable resources shall be certified for distribution to each institution based on its share  
8 of total volume of weighted student credit hours earned during an academic year as established in  
9 KRS 164.092(6)(b).

10        (1) Credit hour weighting by course level and discipline shall be in accordance with the Public  
11 University Funding Model Earned Credit Hour Production Weighting Index. Credit hours earned  
12 by non-resident students shall be given one-half (0.5) the weight of those earned by resident  
13 students in comparable programs of study. Beginning fiscal year 2024-2025, credit hours earned  
14 by non-resident students shall be given three-quarters (.75) the weight of those earned by resident  
15 students in comparable programs of study and resident undergraduate non-traditional age students  
16 shall be given twice the weight of those earned by traditional age students in comparable programs  
17 of study.~~[-and]~~

18        (2) The calculation in subsection (1) of this section shall not include credit hours earned by high  
19 school students taking courses for college credit.

20        Section 7. Operational Support. Thirty (30) percent of total university allocable resources shall  
21 be certified for distribution to each institution in support of vital campus operations as established  
22 in KRS 164.092(6)(c)1. through 3.

1 (1) Ten (10) percent shall be allocated based on facilities' square feet as reported annually to the  
2 council and as established in KRS 164.092(6)(c)1.

3 (2) Ten (10) percent shall be allocated based on direct instruction and student services costs as  
4 reported on each institution's annual audited financial statement and as established in KRS  
5 164.092(6)(c)2.

6 (3) Ten (10) percent shall be allocated based on total full-time equivalent student enrollment as  
7 established in KRS 164.092(6)(c)3 and using the formula established in the Public University  
8 Sector Funding Model Formula Chart.

9 Section 8. Hold-harmless and Stop-loss Provisions.

10 (1) Any final amounts certified for distribution to any institution shall account for any hold-  
11 harmless or stop-loss provisions established in KRS 164.092(9).

12 (2) The council shall determine hold-harmless amounts for institutions [~~in fiscal year 2018-~~  
13 ~~2019]~~ through application of the formula established in this administrative regulation.

14 (a) If the formula total amount generated for an institution is less than its initial allocable  
15 resources, the amount of that difference shall be designated as the institution's hold-harmless  
16 allocation.

17 (b) If applied, an institution maintaining a hold-harmless allocation shall not receive additional  
18 distributions of funding through the model until the hold-harmless allocation balance is brought to  
19 zero through improved institutional performance, additional appropriations, or some combination  
20 thereof.

21 [~~(c) The council shall apply these hold harmless allocations, with any applicable credit~~  
22 ~~adjustments as determined annually by the formula, to all applicable institutions in 2018-2019,~~  
23 ~~2019-2020, 2020-2021, and in any subsequent years as directed by the General Assembly.]~~

1 Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

2 (a) "Public University Funding Model Formula Chart," April 2024~~[June 2017]~~;

3 (b) "Public University Funding Model Metric Weighting Chart," April 2024~~[June 2017]~~; and

4 (c) "Public University Funding Model Earned Credit Hour Production Weighting Index," June  
5 2017.

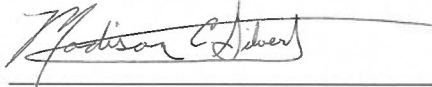
6 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at  
7 the Kentucky Council on Postsecondary Education, 100 Airport Road, Third Floor~~[1024 Capital  
8 Center Drive, Suite 320]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.  
9 and <https://cpe.ky.gov/>.



APPROVED:

04/30/2024

Date



Madison C. Silvert, Chair  
Council on Postsecondary Education

APPROVED AS TO FORM:

07/20/24

Date



Sterling Crayton, Attorney  
Council on Postsecondary Education

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on **June 25, 2024 at 10:00 a.m. EST** at the Council on Postsecondary Education, 100 Airport Road, Third Floor, Frankfort, Kentucky, 40601 in Conference Room A. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until **June 30, 2024**.

Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Sterling Crayton  
Attorney  
Council on Postsecondary Education  
100 Airport Road, Third Floor, Frankfort, Kentucky 40601  
Phone: 502.892.3005  
Fax: 502.573.1535  
Email: [sterling.crayton@ky.gov](mailto:sterling.crayton@ky.gov)

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

**Administrative Regulation 13 KAR 2:120E. Comprehensive funding model for the allocation of state general fund appropriations to public universities.**

Contact person: Sterling Crayton  
Attorney  
Council on Postsecondary Education  
Phone: 502.892.3005  
Email: [sterling.crayton@ky.gov](mailto:sterling.crayton@ky.gov)

(1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation implements a comprehensive funding model by which general fund appropriations shall be distributed in the public university sector.
- (b) The necessity of this administrative regulation: KRS 164.092(12) requires the Council on Postsecondary Education to promulgate an administrative regulation to implement a comprehensive funding model for the public postsecondary education system.
- (c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms explicitly to the authorizing statute.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation allows the Council to determine total university allocable resources for any given year by calculating each institution's formula base amount, subtracting the small school adjustment and any amount protected by a hold harmless provision, and combining these amounts along with any applicable increase or decrease in general fund appropriation in accordance with KRS 164.092.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation: This amendment increases the low-income degree production allocation, removes the underrepresented minority degree production allocation, adds a degree production allocation for first generation students, adds an adult learner earned credit hour premium, eliminates the degree efficiency index weighting, increases the small school adjustments at Kentucky State University and Morehead State University, and increases the nonresident credit hour weighting.
- (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement changes as required by SB 191 (2024 Regular Session). In addition, this amendment constitutes incremental but constructive change to the funding model by creating financial incentives and leveraging the formula to advance state goals for postsecondary education.
- (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of KRS 164.092 as amended by SB 191 (2024 Regular Session) by capturing changes required therein and makes other changes in areas delegated to the Council.

- (d) How the amendment will assist in the effective administration of the statutes: The amendment conforms to the content of KRS 164.092(12) by further ensuring the improvement of opportunities for the Commonwealth's citizens and building a stronger economy through its public college and university system.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation impacts the 8 public universities in Kentucky.
- (4) Provide an analysis of how the entities referenced in section (3) of this subsection will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:
- (a) A detailed explanation of the actions the entities referenced in paragraph (3) of this subsection will be required to undertake in order to comply with the proposed administrative regulation: The entities will not be required to take any action in order to comply with this amendment, although institutional strategies to achieve the performance incentivized by this regulation by change.
  - (b) An estimate of the costs imposed on entities referenced in paragraph (3) of this subsection in order to comply with the proposed administrative regulation: There is no additional cost to entities.
  - (c) The benefits that may accrue to the entities referenced in paragraph (3) of this subsection as a result of compliance: If the public universities increase performance in the areas identified in this regulation relative to other institutions their distribution of performance funding dollars will increase.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: See 4(b) above.
  - (b) On a continuing basis: See 4(b) above.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The postsecondary education performance fund established by KRS 164.092(13), an appropriation unit of the general fund used to support improvement in the operations of the public postsecondary institutions and achievement of the Commonwealth's education policy goals and workforce development priorities.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation does not assess fees.
- (8) State whether this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not assess fees.
- (9) TIERING: Is tiering applied? Yes, one hundred percent (100%) of public institution allocable resources among the public universities based on rational criteria, including each college's share of student success outcomes, course completion, and operational support components, regardless of whether state funding for postsecondary institution operations increases, decreases, or remains stable. Weighting for various items in the regulation vary between research and comprehensive



universities.

## FISCAL IMPACT STATEMENT

**Administrative Regulation 13 KAR 2:120E. Comprehensive funding model for the allocation of state general fund appropriations to public universities.**

Contact person: Sterling Crayton  
Attorney  
Council on Postsecondary Education  
Phone: 502.892.3005  
Email: [sterling.crayton@ky.gov](mailto:sterling.crayton@ky.gov)

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 48.600-48.630, 164.001, 164.092

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Council on Postsecondary Education and the eight public universities across the state.

(a) Estimate the following for the first year:

Expenditures: Approximately \$200,000 per year for CPE to manage and run the model.  
No cost of implementation for postsecondary institutions.

Revenues: None for CPE. In and of itself, this regulation will not generate any revenue, however depending on campus performance and the overall general fund appropriation to higher education, institutions could see increases in general fund revenue.

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? N/A

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):  
N/A

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years? N/A

(4) Identify additional regulated entities not listed in questions (2) or (3): N/A

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years? N/A

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: Duties related to this regulation are generally assumed by Council staff members as part of their many other responsibilities. There are no additional costs of administration.

(b) Methodology and resources used to determine the fiscal impact: General analysis.

**(6) Explain:**

**(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate): This regulation is not anticipated to have a major economic impact on state or local government or regulated entities. This regulation will provide financial incentives to public universities across the Commonwealth.**

**(b) The methodology and resources used to reach this conclusion: General analysis.**

## **SUMMARY OF CHANGES TO MATERIALS INCORPORATED BY REFERENCE**

- (1) "Public University Sector Funding Model Formula Chart", April 2024, a one (1) page document, has been amended to capture the phase in process beginning fiscal year 2024-2025 of calculating bachelor's degrees produced from a normalized formula to a simple count of bachelor's degrees produced.
  
- (2) "Public University Funding Model Metric Weighting Chart", April 2024, a one (1) page document, has been amended to capture the removal of the "underrepresented minority student" bachelor degree production metric and inclusion of an "underrepresented students" metric defined as "first-generation college students" per SB 191 (2024 Regular Session). Changes also include the relevant weights between research and comprehensive universities. It has also been amended to capture the equal weighting between research and comprehensive universities for 1.5% of low income bachelor's degrees conferred.



## **13 KAR 2:120 - Public University Sector Funding Model Formula Chart**

### **Total FTE students**

Total fall semester full-time equivalent (FTE) student enrollment. Calculated as follows: (undergraduate student credit hours ÷ 15) + (graduate student credit hours ÷ 12) + (law student credit hours ÷ 12) + (headcount of medical, dental, and pharmacy students) + (headcount of doctoral dissertation students) + (headcount of post doctoral students) + (headcount of house staff). Includes credit hours attempted by full-time and part-time students, and resident, reciprocity, and nonresident students. Does not include credit hours attempted by high school students taking courses for college credit (i.e., dual enrollment and dual credit).

### **Bachelor's degrees**

Each institution's bachelor's degrees produced multiplied by an index of that institution's bachelor's degrees per 100 FTE students divided by the sector average bachelor's degrees per 100 FTE students.

Bachelor's degrees per 100 FTE students is defined as total bachelor's degrees awarded during the academic year divided by total fall semester undergraduate full-time equivalent (FTE) student enrollment divided by 100.

Beginning in FY 2024-2025, this formula will be phased out over a three-year period with each subsequent year using a simple count bachelor degrees produced.

Council on Postsecondary Education  
 Funding Model for the Public  
 Universities  
 Metric Weighting Chart

Funding Model Metrics	Percent of Formula	Research Universities	Comprehensive Universities
Bachelor's Degrees	9.0%	1.67345	1.00000
STEM+H Bachelor's Degrees	5.0%	1.54105	1.00000
Underrepresented Student Bachelor's Degrees	1.5%	1.00000	1.00000
Low Income Bachelor's Degrees	8.0%	2.35120	1.00000
Low Income Bachelor's Degrees	1.5%	1.00000	1.00000
Student Progression (@ 30 Credit Hours)	3.0%	1.49386	1.00000
Student Progression (@ 60 Credit Hours)	5.0%	1.45320	1.00000
Student Progression (@ 90 Credit Hours)	7.0%	1.56076	1.00000
Student Credit Hours Earned (Weighted)	30.0%	1.14208	1.00000
Facilities Square Feet	10.0%	1.36134	1.00000
Instruction and Student Services Costs	10.0%	0.90251	1.00000
FTE Student Enrollment	10.0%	1.34278	1.00000
	100.0%		