

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 1st 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 SILVERT, Chair

GENERAL GOVERNMENT CABINET
Council on Postsecondary Education
(Emergency Amendment)

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

RELATES TO: KRS 48.600-48.630, 164.001, 164.092

STATUTORY AUTHORITY: KRS 164.092(12)

NECESSITY, FUNCTION, AND CONFORMITY: 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. This administrative regulation establishes the formula by which general fund appropriations shall be distributed in the public university sector.

Section 1. Definitions.

- (1) "Academic year" means July 1st through June 30th and all terms completed therein.
- (2) "Bachelor's degrees" means the total number of bachelor's degrees awarded during the academic year, including degrees conferred to resident and non-resident students.
- (3) "Comprehensive university" is defined by KRS 164.001(7).
- (4) "Council" is defined by KRS 164.092(1)(c).
- (5) "FAFSA form" means the free application for federal student aid form completed by students to determine eligibility to receive federal student financial aid.
- (6) "First-generation college students" means students who report on the FAFSA form that neither parent has earned a college degree or credential, or one (1) parent if the other parent's education level is unknown.
- (7) "Formula base amount" is defined by KRS 164.092(1)(e) and includes a deduction for mandated programs.
- (8) "Hold-harmless provision" is defined by KRS 164.092(1)(f).
- (9) "Institution" means a public university.
- (10) "Low-income student" means a student who received a Federal Pell Grant after the 2005-2006 academic year for attendance at the institution from which the student received a bachelor's degree.
- (11) "Mandated program" means a research or public service activity not integral to the instructional mission of the institution that is:
 - (a) Funded with greater than \$450,000 of state appropriations at research universities and \$200,000 at comprehensive universities; and
 - (b) Directed by statute, resolution, executive branch budget bill, executive order, or other legal mandate.
- (12) "Non-traditional age students" is defined in KRS 164.092(1)(k).
- (13) "Non-resident student" means a student who does not meet the requirements for Kentucky residency for purposes of tuition set forth in 13 KAR 2:045.
- (14) "Research university" is defined by KRS 164.092(1)(m).
- (15) "Resident student" means a student certified as a Kentucky resident for purposes of tuition pursuant to 13 KAR 2:045 and any non-resident student attending an institution under a state tuition reciprocity agreement entered into by the council.
- (16) "Small school adjustment" means a one (1)-time calculation made using the formula base amounts in 2017-2018 and equals:
 - (a) For a research university, ten (10) percent of the respective formula base amount for each institution;
 - (b) For a comprehensive university, ten (10) percent of the total formula base amount for all comprehensive universities divided by six (6); and

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

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

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

(19) "Underrepresented students" means first-generation college students.

(20) "University allocable resources" is defined by KRS 164.092(1)(o).

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

Section 3. Metric Weighting. For purposes of Sections 5, 6, and 7 of this administrative regulation, bachelor's degrees, student progression, earned credit hours, facilities' square feet, instruction and student services costs, and full-time equivalent student enrollment shall be calculated with differential weights for research and comprehensive universities in accordance with the Public University Funding Model Metric Weighting Chart.

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

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

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

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

(3) Nine and a half (9.5) percent based on bachelor's degrees awarded to low-income students in an academic year;

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

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

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

(7) One and a half (1.5) percent based on the number of bachelor's degrees awarded to first generation students in an academic year.

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

(1) Credit hour weighting by course level and discipline shall be in accordance with the Public University Funding Model Earned Credit Hour Production Weighting Index. Credit hours earned by non-resident students shall be given one-half (0.5) the weight of those earned by resident students in comparable programs of study. Beginning fiscal year 2024-2025, credit hours earned by non-resident students shall be given three-quarters

(.75) the weight of those earned by resident students in comparable programs of study and resident undergraduate non-traditional age students shall be given twice the weight of those earned by traditional age students in comparable programs of study.

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

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

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

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

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

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

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

(2) The council shall determine hold-harmless amounts for institutions through application of the formula established in this administrative regulation.

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

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

Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Public University Funding Model Formula Chart," April 2024;

(b) "Public University Funding Model Metric Weighting Chart," April 2024; and

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

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

MADISON SILVERT, Chair

APPROVED BY AGENCY: April 30, 2024

FILED WITH LRC: April 30, 2024 at 3:30 p.m.

PUBLIC HEARING AND 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.

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