



Revolving Loan Fund Application Guide

**ECONOMIC
DEVELOPMENT
INCENTIVES**

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NOTICE

This guidance document is advisory in nature but is binding on the Department of Economic Development (DED) until amended. A guidance document does not include internal procedural documents that only affect the internal operations of DED and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the administrative procedure act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

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1 REVOLVING LOAN FUND CRITERIA

1.1 PROGRAM DESCRIPTION

The **ImagiNE Nebraska Revolving Loan Fund (INRLF)** is a revolving loan fund that was created by the Nebraska Legislature to address the need for workforce training and infrastructure development in Nebraska. The INRLF is administered by the Nebraska Department of Economic Development (DED). The INRLF may receive money from appropriations from the Legislature, grants, private contributions, repayment of loans, and all other sources. All Taxpayers with an ImagiNE Nebraska application on file with DED are eligible to apply for a loan from the INRLF.

1.2 DEFINITIONS

1.2.1 Carry-over Period.

The term Carry-over Period means the period of three years immediately following the end of the Taxpayer's Performance Period under its ImagiNE Agreement as indicated in Neb. Rev. Stat. § 77-6807.

1.2.2 Cash.

The term "Cash" as used in this document means payment in legal U.S. tender made by electronic transfer from the Taxpayer to DED.

1.2.3 Credits.

The term "Credits" as used in this document means the credits earned by a Taxpayer under its ImagiNE Nebraska Agreement.

1.2.4 Cure Period.

A Cure Period is the period of time in which a Taxpayer may cure an Event of Default under the Taxpayer's INRLF loan agreement or if a scheduled loan payment is not made at the time required before the default becomes final. This period shall be for a maximum of 120 days from the Event of Default or nonpayment.

1.2.5 DED.

The term "DED" as used in this document means the Nebraska Department of Economic Development.

1.2.6 Event of Default.

Any one or more of the following is typically an event of default under the INRLF loan agreement:

- a. Any representation or warranty Taxpayer makes in any agreement with DED, including but not limited to this Loan Agreement, to which Taxpayer is a party or by which it is bound, or any statement or representation Taxpayer makes in any certificate, report or opinion, or other document delivered pursuant thereto, is discovered to have been false in any material respect when made;
- b. Nonpayment of any principal or interest when due with respect to the Promissory Note, whether at maturity or otherwise that is not remedied or waived within ten (10) days of nonpayment.
- c. Breach by Taxpayer of any term or provision of this Loan Agreement that is not remedied or waived within thirty (30) days after such breach has occurred.
- d. Taxpayer:

- i. fails to pay, or admits in writing its inability to pay, its debts as they become due, or otherwise becomes insolvent however evidenced;
 - ii. files a petition or applies to any governmental authority for the appointment of any receiver, conservator, or liquidating agent;
 - iii. as commenced against it any proceeding for the appointment of any receiver, conservator, or liquidating agent, or by any act indicates its consent to, approval of, or acquiescence in any such proceeding or appointment; or
 - iv. takes any corporate action to authorize any of the foregoing.
- e. Taxpayer's failure under its ImagiNE agreement to attain the required minimum number of new employees, minimum compensation, and minimum required cumulative investment necessary for Taxpayer to earn Credits.

1.2.7 ImagiNE Agreement.

For the purposes of this program, the term ImagiNE Agreement means an agreement entered into between Taxpayer and the State of Nebraska pursuant to the ImagiNE Nebraska Act.

1.2.8 Infrastructure Development Loan

An infrastructure development loan is a loan from the ImagiNE Nebraska Revolving Loan Fund to cover any expense a Taxpayer incurs for the provision of basic physical systems, structures, equipment, and/or facilities required for business operations at the Taxpayer's qualified location(s) included in its ImagiNE Nebraska agreement.

1.2.9 INRLF

For the purposes of this program, the ImagiNE Nebraska Revolving Loan Fund will be abbreviated INRLF.

1.2.10 Loan Committee.

The Loan Committee shall be responsible for making all final loan decisions. Members of the committee shall be the Administrator of DED's Incentives Division or his or her designee; the Administrator of DED's Research Division or his or her designee; and the Director of Field Operations or his or her designee. No individual shall serve as a voting member of the Loan Committee under circumstances creating a conflict of interest, real or apparent. If such a conflict arises, a designee without a conflict is to be designated by the respective Administrator or Director.

1.2.11 Performance Period.

The term Performance Period means the year during which the required increases in employment and investment were met or exceeded and each year thereafter until the end of the sixth year after the year the required increases were met or exceeded as indicated in Neb. Rev. Stat. § 77-6816.

1.2.12 Ramp-up Period.

The term Ramp-up Period means the period of time from the date of the complete application through the end of the fourth year after the year in which the complete application was filed as indicated in Neb. Rev. Stat. § 77-6820.

1.2.13 Taxpayer.

The term "Taxpayer" as used in this document means a taxpayer with an application under the ImagiNE Nebraska Act as indicated in Neb. Rev. Stat. §77-6842 and defined in Neb. Rev. Stat. § 77-6822 who has applied or received a loan from the Imagine Nebraska Revolving Loan Fund.

1.2.14 Workforce Training Loan

A workforce training loan is a loan from the ImagiNE Nebraska Revolving Loan Fund to cover any expense a Taxpayer incurs to train current or newly hired employees for jobs, existing or to be created, at the qualified location under its ImagiNE agreement.

1.3 FINANCING POLICIES

1.3.1 Loan Eligibility.

Taxpayers with an application under the ImagiNE Nebraska Act are eligible to apply for one workforce training and one infrastructure development loan per ImagiNE agreement by applying to DED as indicated in Section 2.1.1.

1.3.2 Workforce Training Expenses.

Workforce Training Expenses for which DED may make loans under the INRLF are expenses a Taxpayer with an ImagiNE Nebraska application necessarily incurs to train employees for jobs, existing or to be created, at a qualified location in its ImagiNE Nebraska agreement. The training should be for high-paying jobs commonly associated with the type of business performed at the qualified location. Among other criteria, DED will consider the number of jobs, types of jobs, and post-training wages of the jobs for which the training is provided. Taxpayers must provide a detailed schedule for the proposed workforce training program. Preference will be given to workforce training projects which (1) partner with educational institutions as enumerated under Section 77-6842; (2) lead to a national, state, or locally recognized certificate; (3) prepare participants for a professional examination or licensure; (4) provide endorsement for an existing credential or license; or (5) develop recognized skill standards as defined by an industrial sector.

1.3.3 Infrastructure Development Expenses.

Infrastructure Development Expenses for which DED may make loans under the INRLF are expenses a Taxpayer with an ImagiNE Nebraska application incurs for the provision of basic physical systems, structures, equipment, and/or facilities required for business operations at the Taxpayer's qualified location(s) included in its ImagiNE Nebraska agreement. DED will consider the types and number of high-paying jobs to be created or retained at the location. Preference will be given to projects that improve the quality of life for workers and the surrounding community as well as projects necessary to secure new, high-paying jobs.

1.3.4 Use of Proceeds.

Proceeds of any INRLF loan may only be used for Workforce Training Expenses or Infrastructure Development Expenses which are defined in Sections 1.3.2 and 1.3.3 of these Guidelines and described in the Taxpayer's application. Only eligible expenses incurred after the loan is approved by the INRLF Loan Committee will be considered an approved use of loan proceeds. Use of the loan proceeds for unapproved uses will be considered a material default.

1.3.5 Loan Size.

The maximum total loan amount available to any Taxpayer is the sum of 50 percent of the Taxpayer's projected Credits indicated in Taxpayer's INRLF loan application and any earned and unused Credits under Taxpayer's relevant ImagiNE agreement at the time of loan disbursement. No Taxpayer can have a total outstanding principal balance with the INRLF of more than \$2 million at any given time across all loans and agreements.

1.3.6 Interest Rate.

The interest rate is statutorily fixed by Neb. Rev. Stat. §45-1021¹. Interest will accrue from loan origination. Payment of interest will not be required until the repayment plan begins. Interest accrued before repayment begins must be paid with the first payment due.

1.3.7 Maturity Terms.

The loan's maturity term is based on Taxpayer's performance under its ImagiNE agreement and begins either when (1) Taxpayer enters the Performance Period or (2) Taxpayer's Ramp-up Period ends under Taxpayer's ImagiNE Agreement.

An infrastructure development loan will mature on the sixth annual payment due date following the first annual payment or at the end of the first year of Taxpayer's Carry-over Period under Taxpayer's ImagiNE Agreement, whichever occurs first. A workforce training loan will mature on the fourth annual payment due date following the first annual payment or will mature at the end of the first year of Taxpayer's Carry-over Period under Taxpayer's ImagiNE Agreement, whichever occurs first.

1.3.8 Repayment Terms.

All loans will require annual payments at a minimum. Loans under this program and the interest thereon may be repaid using Credits and/or Cash. The annual payment due date will be Taxpayer's federal income tax return due date excluding any automatic extension allowed. If Taxpayer chooses to pay its annual payment in Cash, the annual payment must be received by DED on or before the due date of Taxpayer's federal income tax return. If Taxpayer chooses to utilize Credits earned under its ImagiNE Agreement, the effective date of payment each year will be the date of filing of Taxpayer's relevant 1107N. Failure to obtain levels pursuant to Taxpayer's ImagiNE Agreement converts the repayment terms to monthly principal and interest payments based on the loan's original maturity term. For specifics on determining individual repayment terms or amounts, see Section 2.3.

1.3.9 Fees.

No application or origination fee is required at the time of application. A 0.5% service fee is statutorily assessed when Credits are used for loan repayment. Taxpayer is responsible for costs, if any, incurred in the application and closing process. If after Taxpayer signs the Notice of Approval, the loan does not close for any reason, Taxpayer will continue to be responsible for all costs, if any, incurred in connection with the loan preparation.

1.3.10 Collateral.

Loans provided by the INRLF do not require the pledge of collateral to secure the loan. However, if Taxpayer obtains a loan under this section and fails to meet the requirement of its ImagiNE Agreement, the principal and interest of the loan shall be considered an underpayment of tax and may be recovered by the Department of Revenue.

All real or personal property purchased with Loan proceeds that is capitalized rather than expensed must be retained by Taxpayer until the later of complete repayment of the Loan or successful completion of the Performance Period under its ImagiNE Agreement. In the event any real or personal

¹ As of January 1, 2022, the applicable interest rate is 6 percent (6%).

property purchased with Loan proceeds is sold by the Taxpayer before the later of complete repayment or successful completion of the Performance Period as indicated, the sales proceeds and any interest accruing thereon must be held in trust for the benefit of the State of Nebraska until the later of complete repayment of the Loan or successful completion of the Performance Period under its ImagiNE Agreement.

1.4 PORTFOLIO STANDARDS AND TARGETS

The INRLF will strive to maintain a balanced portfolio of loans. To this end, the portfolio’s composition will conform to the following percentages as closely as practicable.

No more than 55% of the portfolio’s balance should be allocated for loans issued to Taxpayers from a single geographic location type – either Rural or Urban. A Rural area is defined as a county in Nebraska with a population of less than one hundred thousand residents. An Urban area is defined as a county in Nebraska with a population of one hundred thousand residents or greater.

Additionally, the maximum value of loans in the following application levels should not exceed the indicated percentage for that level:

Manufacturing Growth & Expansion (Rural)	55%
Manufacturing Growth & Expansion (Urban)	55%
Growth & Expansion	40%
Quality Jobs Investment	30%
Quality Jobs	30%
Economic Redevelopment Areas	20%
Mega-Project	20%
Modernization	20%

The standards and targets for the INRLF portfolio will be reviewed annually to ensure the INRLF continues to align with DED’s comprehensive business development strategy. Annual changes to INRLF targets, if any, will be published by DED on the ImagiNE Nebraska website.

The situation may arise under which the Loan Committee is unable to progress Taxpayer’s application to approval because the INRLF has insufficient capacity to accommodate the requested loan in its portfolio. In that event, Taxpayer’s application may be placed in suspended status rather than denied until such time as capacity becomes available. Once the INRLF can accommodate the requested loan, the INRLF Business Manager or their designee may request updates to portions of the application, but a full reapplication may not be necessary.

1.5 INRLF LOAN SELECTION CRITERIA

The INRLF’s Loan Committee considers the criteria indicated below, and uses the following scoring rubric, when evaluating whether an application meets the minimum threshold requirement. A loan application must score 100 for further consideration by the Loan Committee. Scoring 100 points is a minimum threshold only and does not guarantee approval.

Criteria	Point Value
Implementation Plan	50
Financial Capacity of Application	60
Impact on Employment in Nebraska	30
Alignment with DED's Comprehensive Business Development Strategy	40
Necessity of Loan to Assure Expansion in Nebraska	20
Total	200

2 INRLF OPERATIONAL PROCEDURES

2.1 LOAN PROCESSING PROCEDURES

2.1.1 Application Procedure.

A Taxpayer may apply for either a Workforce Training Loan or an Infrastructure Development Loan at any time after it submits an application under the ImagiNE Nebraska Act. Loans will not be considered for approval or denial until after an ImagiNE application has been approved and an ImagiNE Agreement has been signed.

Instructions on how to complete and submit the ImagiNE Nebraska Revolving Loan Fund Application can be found at imagine.nebraska.gov/revolving-loan-fund. Direct access to the Loan Application is available by [clicking here](#). DED utilizes web-based software under a license agreement with LoanPro to facilitate the INRLF application and post-approval servicing processes. Any questions regarding the web-based application should be directed to the INRLF Business Manager or Business Consultant assigned to your application.

2.1.2 Credit and Financial Analysis.

Taxpayers must provide three years of financial statements. In the event Taxpayer has not been in existence for three years, Taxpayer must provide as many statements as available.

At a minimum, Taxpayer's financial history must contain the Taxpayer's balance sheet and income statement with accountant notes and assumptions. This information should also contain a schedule of Taxpayer's debts. Audited or reviewed statements are preferred; however, other statements may be acceptable if supported by tax returns. The most recent statements should be no more than ninety days old at the time of application. Interim financial statements may be used to ensure statements meet this requirement. Any statements not prepared by an accountant must be signed by a company officer.

Taxpayers must also submit pro forma financial statements for the next fiscal year and a projection for year 1 of the Performance Period under Taxpayer's ImagiNE Agreement. Pro forma statements must include balance sheets, income statements, and must be supported by notes and justifiable assumptions.

Upon request by DED, Taxpayers may be required to provide a listing of all affiliates or subsidiaries and the last three years' balance sheets and profit and loss statements for each. The most recent personal financial statement for each principal owner and any guarantors may be required on a case-by-case basis. Tax returns may be required. These statements must also be signed and be no more than 90 days old.

2.1.3 Business Information Required.

Taxpayer must provide copies of all organizational documents as applicable:

- a. Articles of Incorporation, Articles of Organization or Certificate of Partnership
- b. By-laws, Operating Agreement, or Partnership Agreement
- c. A resolution supported by minutes from Taxpayer's governing board designating the person(s) authorized to borrow funds and execute all related loan documents between Taxpayer and the INRLF authorizing Taxpayer to borrow up to the requested loan amount.
- d. Certificate of Good Standing from Nebraska Secretary of State
- e. Taxpayer's organization chart showing key position and functions. Resumes of key management including Taxpayer's President/CEO, CFO, and others upon request.
- f. An updated and expanded ImagiNE Nebraska Act Investment and Employment Projection to include projection through Taxpayer's anticipated Performance Period under its ImagiNE agreement.
- g. If applicable, summaries, including descriptions and current status, of any legal proceedings, bankruptcies, consent decrees, orders, investigations, unasserted claims or suits against Taxpayer, any affiliates or guarantors and all principals with ten percent or more ownership, which are currently pending or threatened, or which were concluded in the ten years prior to the date of Loan application.

2.1.4 Loan Write-Up.

The loan write-up, prepared by the INRLF Business Manager or their designee, will summarize key components of the proposed loan including business history, management, assessment criteria, repayment ability, consistency with the INRLF guidelines, and whether any other issues exist which should be considered, and the recommendation of the INRLF Business Manager.

2.1.5 Procedures for Loan Approvals.

Completed loan application, all appropriate supporting documentation, and loan write-up will be presented by the INRLF Business Manager and/or his or her designee with recommendation to the Loan Committee. Meetings of the Loan Committee will take place on the first and third Monday of each month. Minutes of the Loan Committee meeting shall be kept including vote totals for each loan application approval.

2.1.6 Notice of Approval.

Upon approval of an application by the Loan Committee, the INRLF will issue a Notice of Approval ("Notice"). This Notice will inform Taxpayer of any condition of approval requiring further action of Taxpayer. Taxpayer must comply with all conditions and be able to close the loan within 90 days of the Notice date. Any request for extension must be made by Taxpayer before the expiration of the 90-day period. Any extensions of this deadline will be at the sole discretion of the INRLF Business Manager. Failure of Taxpayer to timely comply with the Notice conditions will result in the withdrawal of loan approval. Taxpayer must reapply if they wish to continue seeking a loan from the INRLF.

Included with the Notice of Approval will be a State of Nebraska W-9 & ACH Enrollment Form. This form must be completed and returned to DED before loan proceeds can be disbursed. Taxpayers who wish to continue to loan disbursement should complete and return this form as soon as possible.

2.1.7 Notice of Denial.

In the event an application is denied by the Loan Committee, the INRLF will issue a Notice of Denial which will include the factors underlying the decision. Taxpayers are free to reapply upon significant changes to the factors which led to the denial.

2.2 LOAN CLOSING AND DISBURSEMENT PROCEDURES

2.2.1 Loan Closing Documents.

The INRLF closing procedure will make use of the following documents:

- a. Promissory Note
- b. Loan Agreement

2.2.2 Loan Disbursement.

All required loan application documents, loan closing documents, and any other supporting documents must be completed and provided to DED along with the necessary fees, if any, prior to disbursement of loan funds. For loans involving the purchase of real property, a purchase agreement, construction contract, and any other supporting documentation requested by DED must be provided by Taxpayer. For other loans, invoices, vendor quotes, or any other supporting documentation requested by DED must be provided to DED when applicable.

Proceeds from INRLF loan must be used as agreed upon in the Loan Agreement. To facilitate the INRLF's responsibility to ensure INRLF requirements are being met, Taxpayers may be required to provide a separate bank account into which the loan proceeds will be distributed. Bank records for this account will be used to demonstrate the appropriate use of loan proceeds.

If Loan proceeds are to be utilized in a single expenditure, Taxpayer must expend all Loan proceeds on the Approved Purpose within Thirty (30) days of the proceeds disbursement to Taxpayer. If Loan proceeds are to be utilized by Taxpayer through multiple expenditures, Taxpayer must expend all Loan proceeds on the Approved Purpose within Three Hundred Sixty-Five (365) days of the proceeds disbursement to Taxpayer. Any Loan proceeds not expended by Taxpayer within the time allotted after disbursement will be returned to DED unless an extension is approved by DED after Taxpayer requests such extension in writing. Immediately upon becoming aware that any portion of the Loan proceeds are not needed to fund the Approved Purpose, Taxpayer shall return said proceeds to DED plus interest accrued on the unused proceeds from the date of disbursement.

2.3 LOAN SERVICING PROCEDURES

2.3.1 Repayment.

All loans will require annual payments at a minimum. Loans under this program and the interest thereon may be repaid using Credits and/or Cash. The annual payment due date will be Taxpayer's federal income tax return due date excluding any automatic extension allowed. If Taxpayer chooses to pay its annual payment in Cash, the annual payment must be received by DED on or before the due date of Taxpayer's federal income tax return. If Taxpayer chooses to utilize Credits earned under its ImagiNE Agreement, the effective date of payment each year will be the date of filing of Taxpayer's relevant 1107N. Failure to obtain levels pursuant to Taxpayer's ImagiNE Agreement converts the

repayment terms to monthly principal and interest payments based on the loan's original maturity term.

Prior to each annual due date, DED will issue a billing statement to Taxpayer indicating the amount due if Taxpayer chooses to pay with Cash or Credit. The letter will provide a deadline date for Taxpayer to indicate to DED whether it will be making the annual payment with Cash or Credits. If no response is provided by the Taxpayer, DED will assume Taxpayer will be making its annual payment with Cash.

2.3.2 Amount of Annual Payment.

The amount of Taxpayer's annual payment will be determined as follows:

a. Workforce Training Loans.

If a Taxpayer chooses to make its annual payment with Credits, its annual payment amount will be the sum of up to (1) 85% of its Credits earned in the calendar year prior to the year in which the annual payment is due; and (2) any earned and unused Credits from prior years based on Taxpayer's particular circumstance.

If a Taxpayer chooses to make Cash payments, the annual payment amount will equal the remaining balance amortized over the years remaining on the loan set within the parameters of Section 1.3.7.

Regardless of payment method, each year the amount and total number of installments can be adjusted, as necessary, to account for changes in Credits earned and projected.

b. Infrastructure Development Loans.

For Taxpayers who choose to make its annual payment with Credits, its annual payment will be the sum of up to (1) 70% of its Credits earned in the year prior to the year in which the annual payment is due; and (2) any earned and unused Credits from prior years based on Taxpayer's particular circumstance.

Taxpayers who choose to make an annual payment with Cash, the annual payment will equal the amount necessary to amortize the remaining balance within the parameters of Section 1.3.7.

Regardless of payment method, each year the amount and total number of installments can be adjusted, as necessary, to account for changes in Credits earned and projected.

2.3.3 Monitoring.

DED will monitor the progress of workforce training and infrastructure development projects. As deemed necessary, DED may conduct an audit and review business and employee records pertaining to either loan type. DED will not require annual financial statements. However, DED reserves the right to request financial statements from Taxpayer. Taxpayer must provide information within 30 days of DED's written request.

2.3.4 Loan Default.

Upon the occurrence of an Event of Default under the Loan Agreement or if a scheduled loan payment is not made at the time required, Taxpayer shall have a period to cure the default before it becomes final. This period is known as the Cure Period and shall be for a maximum of 120 days from the Event of Default or nonpayment.

Throughout the Cure Period, DED will maintain contact with Taxpayer concerning the default. Initially, DED may provide informal reminders via email or phone about the missed payment or other default

which Taxpayer needs to cure. If the default is not resolved through this informal contact, DED may begin contacting Taxpayer about the missed payment or other default Taxpayer needs to cure through more formal means such as written letters. The indicated communications are not required for DED to enforce its rights under the Loan Agreement. If and when they are made, they are sent as a courtesy reminder to Taxpayer.

Should Taxpayer fail to cure the Event of Default before the end of the Cure Period, the loan will be considered in default and DED will pursue any remedies available under the Loan Agreement and Promissory Note. In the event a default is not cured within the Cure Period, the principal and accruing interest of the loan shall be considered an underpayment of tax and may be recovered by the Department of Revenue pursuant to Neb. Rev. Stat. § 77-6841(5).

The period for curing a default resulting from the failure to make a scheduled loan payment may be tolled if the failure results from a delay in a Credit allocation that resulted from no fault of Taxpayer.

3 CONFIDENTIALITY

While information submitted to DED is typically subject to Nebraska’s public records statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2020), the ImagiNE Nebraska Act indicates in Neb. Rev. Stat. § 77-6828(2) that DED is required to keep the ImagiNE application, agreement, all supporting information, and all other information reported to DED confidential except for the Taxpayer’s name, the qualified location or locations in the agreement, the estimated amounts of increased employment and investment stated in the application, the date of complete application, the date the agreement was signed, and the information required to be reported by section Neb. Rev. Stat. § 77-6837. All information provided to the INRLF by a Taxpayer is considered supporting information or information reported to DED as defined in Section 77-6828(2) and will be kept confidential as required under the Act. As it relates to the INRLF, Section 77-6837 requires DED to include an aggregated “amount of workforce training and infrastructure development loans issued, outstanding, repaid, and delinquent” in a report to the legislature annually.

4 CONTACT INFORMATION

For more information on the ImagiNE Nebraska Revolving Loan Fund Program contact:

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