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# PED CREDIT GUARANTY FACILITIES: START-UP, OPERATIONS, INTERFACE

*Bureau for Private Enterprise*
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*Prepared by:* *S. Lack*

*Sponsored by:*

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*Prime Contractor: Arthur Young*

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Arthur Young
A MEMBER OF ARTHUR YOUNG INTERNATIONAL

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## EXECUTIVE SUMMARY

This report was prepared at the request of the Office of Private Sector Programs (O/PSP), USAID/Guatemala, during the month of June 1988. The Scope of Work, which appears as Appendix A to this report, calls for assistance in the pre-implementation of a Local Currency Credit Guaranty Fund and in the start-up of the Private Enterprise Bureau (PRE -- AID/W) Credit Guaranty Line (PRE-940).

For the Local Currency Credit Guaranty Fund (LC/CGF), the consultant prepared working drafts of a project agreement and operations guideline, as well as a draft trust contract. These documents, which appear as Appendices B and C to this report, have been forwarded to independent Guatemalan legal counsel for their review and opinion. It is anticipated that the documents will be ready for signing by the end of July.

The consultant provided technical assistance for the PRE Credit Guaranty Line during a consultancy in February; during the June consultancy, he provided additional assistance to resolve documentation and interpretive differences. Signature of the final version of a Project Agreement is expected before the end of June.

The present report includes recommendations for promoting interest in and utilization of the PRE line. An important recommendation in this regard is that A.I.D., through its credit promoter, should work directly with small and medium entrepreneurs and their banks to facilitate and hasten guaranty line usage. Recommendations for qualitative measurement of bank and borrower participation in the guaranty project include: (a) collection of transaction data to profile guaranty utilization and (b) informal appraisals to ensure that beneficiaries from the guarantees are those for whom the project was intended.

Additional recommendations, to support the effectiveness of the LC/CGF, but which are applicable as well to the PRE-line, include: a) suggestions for the development of a credit demand data base; b) means to impact relevant policies and laws, especially through the Chamber of Finance; c) training guidelines for guaranty facility administrators; and d) additional steps to promote the facilities among both entrepreneurs and banks.

In the last section of the report, consideration is given to possible interface between the LC/CGF and other components of USAID/Guatemala's Private Enterprise Development Project, (PED 520-0341). Specific recommendations are provided for a loan procurement training course as part of the PED manager training component and for possible export finance linkages as part of the PED export component. LC/CGF interface with other aspects of the PED financial markets development component are considered as well, including privatization, free trade zone and debt/equity swap initiatives.

## I. START-UPS

### A. Local Currency Credit Guaranty Fund (LC/CGF)

On the basis of pertinent background documentation including the PRE-940 Project Agreement, early drafts of a local currency credit guaranty project agreement, samples of trust fund arrangements, and a copy of Guatemala's Trust Law, the consultant prepared the following draft documents:

- A Local Currency Credit Guaranty Fund Project Agreement and Operations Annex (Appendix B to this report); and
- A Trust Fund Contract (Appendix C to this report).

The first of these documents is designed to formalize and provide operational instructions for the LC/CGF signatories, that is, A.I.D., the Fund Administrator and participating financial institutions. The second document is a trust arrangement designed to create one or more trust funds between A.I.D., as Settlor, and one or more local commercial banks as Trustees or Fiduciary Agents. The funds to be held in trust originate in the 1987 ESF agreement between AID and the Government of Guatemala, and they will be applied toward the establishment of the local currency guaranty fund to back up guarantees issued to participating financial institutions for their loans to small and medium scale enterprises.

To ensure that these documents conform with all applicable Guatemalan laws, local counsel was selected and asked to carry out the tasks specified in the Scope of Work in Appendix D. The legal opinions are expected by the end of July.

Preparation of the draft documents and the scope of work for the independent legal counsel were carried out in consultation with and on approval from the Financial Services Officer of the Private Sector Office.

Administrative arrangements for the operation of the LC/CGF were simplified considerably after discussions with local bankers and the Chamber of Finance. Specifically, it was found that the documentation required under the PRE-940 Credit Guaranty Line, such as guarantee application forms, letters of credit, assignment certificates and sub-loan schedules, would not be necessary for the LC/CGF. It was agreed that the purposes for which such documentation was intended could be accomplished through exchanges of letters.

It was also decided, in principle, that the Chamber of Finance would be a more appropriate Fund Administrator than would the Guatemalan Business Chamber (CAEM) because of its broad representation of financial institutions and the experience of its officials in financial administration. Plans and documentation to effect transfer of the Administrator designation from CAEM to the Chamber are presently being drawn up.

As regards the Bank of Guatemala (the Central Bank), it was determined that until the LC/CGF documentation has been finalized and approved by local independent counsel, it would not be appropriate to review the facility with the Bank. It was further agreed that while the Bank of Guatemala should be informed of the purpose and progress of the LC/CGF, it should not play any direct role in the Fund's operation. Instead, the Bank will eventually be asked to support the operations of the LC/CGF indirectly by effecting changes in commercial bank capital and reserve requirements and undertaking related measures that may encourage financial institutions to use the LC/CGF.

B. <u>PRE Credit Guaranty Line (PRE-940)</u>

As of this writing, the PRE Credit Guaranty Line Project Agreement has not been signed. Signature has been delayed because of several

objections to the documentation from local banks. Their principal concern was that the authorities vested in CAEM as Project Administrator, including certification and decertification of banks and periodic analysis of banks' financial condition, were not appropriate, in part because CAEM is not a financial institution. As a consequence, changes were made in the wording of pertinent clauses and, as noted above, it was agreed that the Administrator role could be transferred to the Chamber of Finance. PRE in AID/W has now approved a final version of the Project Agreement. All parties have expressed their approval and the signing is expected shortly.

Until the PRE-940 facility becomes operational, it is, of course, impossible to measure new bank participation. (Only one bank is fully ready to sign the agreement at present.) It is possible, however, to begin to prepare for the promotion of the facility. To this end:

1) Plans should be finalized to have the Mission's credit promoter visit banks and small and medium enterprises (SMEs) in order to explain the purpose and functioning of PRE-940.

2) One or two half-day seminars should be carried out for SME representatives in order to further describe PRE-940.

3) A media campaign should be initiated. The campaign activities should be carried out very gradually so as to permit dovetailing with similar activities related to the LC/CGF once that facility is launched. Consequently, the budget for this purpose for PRE-940 should not exceed US $5,000 to $10,000 out of the $50,000 available for such promotion.

A.I.D., through the guaranty line administrator, and under the supervision of the credit promoter, should monitor banks and sub-borrowers to learn how they are using the PRE-940 facility and the LC/CGF. The following data should be obtained and analyzed in general and for each bank:

- Incidence of utilization by sub-sector

- Average utilization per sub-loan
- Utilization distribution by sub-loan purpose; working capital vs. fixed assets
- Average sub-loan size
- Average sub-loan tenor
- Geographic distribution of sub-borrowers
- Claim record
- Exceptions, waivers and rationales for same
- Incidence of repeat utilization by both banks and sub-borrowers

In addition to obtaining the above information, informal appraisals should be carried out to determine to what extent A.I.D.'s intended guaranty facility beneficiaries are using and benefitting from the facility. This will require actual visits to sub-borrowers and the development of an informal appraisal scheme to verify true sub-borrower ownership and true business size. (The conduct of such an appraisal is a sensitive task and should be the responsibility of the credit promoter or another professional from the Private Sector Office.)

Based upon results of the data analysis and the informal appraisal, A.I.D. and the Administrator should establish "internal guidance lines" to favor those banks that make the most appropriate use of the facility. Transaction analysis will also be useful in indicating any necessary operational or reporting modifications that may be necessary.

As in the case of the LC/CGF, it has been decided to discourage any direct role for the Bank of Guatemala in the PRE-940 facility. A preliminary description of the facility was given to the Bank in February. Further consultation on the PRE facility should be undertaken in conjunction with discussions on the LC/CGF when both facilities are operational.

## II. OPERATIONS

### A. Data Base for the LC/CGF

The fundamental data necessary to support increased, appropriate use of the LC/CGF and, for that matter, of PRE-940, relate to credit demand among the SMEs. Good work in this area has been limited. As a consequence, few people in CAEM, the Gremial or USAID have adequate information as to the number of SMEs in Guatemala, their sub-sector profiles or their true financial needs. Two documents that have addressed SME credit demand represent a beginning and bear review. The questionnaires used for each of these documents will also be useful in conducting future surveys.

The first of the documents is entitled The Private Sector Survey for Guatemala (April 24, 1986). It was prepared for USAID/Guatemala through International Science and Technology Institute, Inc. (ISTI). Roger Cowan and Ricardo Alvarado authored the document under the auspices of Roger Cowan and Associates.

The report contains the results and analysis of a survey of 102 Guatemalan companies with 10 to 100 employees; the companies were located in different parts of the country, although most were in Guatemala City. The study estimated that there are some 3000 such companies in Guatemala. Virtually all interviewees described lack of finance as a problem and emphasized that high bank collateral requirements were beyond their reach. Most SMEs indicated that working capital was a priority need. Companies having more than 50 employees tended to favor banks and financieras as financial intermediaries while smaller companies did not favor such intermediaries. The surveyors recommended that the PED project provide working capital for SMEs and that the best financial intermediary would be a consumer finance company.

The survey provides a good picture of the financial problems and other difficulties faced by SMEs. As its authors point out however, it is not a statistically valid survey. Furthermore, it does not adequately highlight sub-sector definitions or estimates of credit demand. The work represents a good beginning, however, and should serve as a reference for developing benchmark data and for developing a methodology to obtain more detailed credit demand data related to the operation of the LC/CGF.

The second document is entitled Economic Analysis of the Agribusiness Development Project. It was prepared by Susan Goldmark on behalf of Development Alternatives, Inc. for USAID/Guatemala (November 2, 1984). It contains the results and analysis of a survey of 57 non-traditional agribusinesses of all sizes. The study found lack of working capital to be a major problem and quantified credit demand at Q22.3 million of which 50% was for working capital and 50% was for fixed assets. The survey questionnaire is useful, as are the specific data, as a basis for continuing data collection and analysis.

Perhaps the best documentation for the future operation of the LC/CGF is a list of some sixty agribusiness SMEs whose loan applications were turned down between 1985 and 1987 for lack of sufficient guarantees. This list, together with background material in some instances, was compiled by and is available from the credit promoter in O/PSP. The listing should be reviewed and SMEs should be polled to identify immediate prospects for resubmission of loan applications in conjunction with collateral support from the LC/CGF.

The LC/CGF data collection methodology should follow the basic methodologies employed by Messrs. Cowan and Alvarado and Ms. Goldmark, including updated checkings of local industry directories and chamber and guild membership rolls, in conjunction with

appropriate survey questionnaires. The questionnaires should be geared to ascertaining credit demand information and true bankability, including available collateral. Surveyors should understand normal cash flow patterns and business practices for the particular SME sub-sector to be interviewed in order to make early judgments about the proper size and type of credit requests, and judgments on bankability.

Certain priority sub-sectors should be selected for early data collection and possible follow-up. These priority sub-sectors ought to include contract apparel manufacturers (maquila); packaged food processors; metal work businesses and services; cosmetics and health products manufacturers; wood products manufacturers; and a selection of distributor and service businesses. The goal of surveyors should be to ascertain and follow-up on bankable demand while recording total demand, adjusted to reflect the surveyors' understanding of the practical requirements of the particular SME.

Responsibility for developing and updating the data base should reside at CAEM which should provide survey results to the LC/CGF Administrator. CAEM personnel ought to carry out survey activities under the training and supervision of USAID's credit promoter, who should be responsible for follow-up.

To further promote LC/CGF operations, surveyors and the credit promoter should develop conservative estimates of the aggregate bank deposit levels and bank service purchase potentials of SMEs. These estimates could then be made available to financial institutions, in addition to other survey results, to demonstrate the business development opportunities of working with SMEs.

## B. Policy, Legal and Practice Issues

The following is a list of relevant laws and regulations that affect LC/CGF and PRE-940 operations.

Banking Law (Ley de Bancos - Decree No. 315, as Reformed by Decree 1315)

Title III, Chapter IV, Guarantees, Article 89: Provides that banks may not lend more than 50% of the value of real estate mortgages. Accordingly, borrowers must provide mortgages at least twice the value of their loans. In practice, bankers tend to insist on collateral equal to three to four times the face value of loans. For SME borrowers this requirement is usually prohibitive.

Title III, Chapter II, Capital and Reserves, Article 20: Establishes paid capital and reserve minima for commercial banks as follows: 5% of government securities; 10% of other securities or loans; and 50% of investments in real estate and other fixed assets.

Title VII, Chapter II, Selective Credit Control, Article 80: Provides that, in order to "...promote an adequate distribution of national economic interests..." the Monetary Board may modify capital and reserve minimum requirements; select loan and security groups or subgroups and fix different percentage capital/reserve requirements for these categories; establish portfolio expansion limits; and establish expansion limits for specific categories of loans and investments.

Banco de Guatemala Charter (Ley Organica del Banco de Guatemala, Decree 215, as reformed by Decree 1314)

Title IV, Chapter II, Bank Reserves, Article 63: Defines bank reserves and requires minima as established from time to time by the Monetary Board.

Private Finance Company Law (Ley de Sociedades Financieras Decree-Law 208 and Decree 51-72). Under this law, the Monetary Board has ample authority to create regulations and stipulate exemptions concerning loan guarantees, interest rates and reserves for finance companies..

Income Tax Law (Ley de Impuestos sobre la Renta): Income from private corporate securities is taxable while income on bank deposits and government securities is essentially tax-free. Attempts at changes in this regimen have been unsuccessful but should be continued, probably through the Chamber of Finance.

The relevancy of different policies, laws and practices to the operations of the LC/CGF can be described in terms of: a) impact on available liquidity and b) impact on the risk/reward or cost/benefit calculations of financial institutions.

1. Impact on Available Liquidity

It should first be noted that most forecasts for Guatemala's economy over the next four or five years point to an excess rather than a shortage of liquidity. Considering the relatively small aggregate SME loan amounts that would be partially secured over this period through the LC/CGF (probably not more than Q20 million), nominal availability of funds should not be a problem.

Additionally, the LC/CGF itself will provide liquidity to the banking system as funds are deposited in trust and then invested locally. In both the short and long term, however, shortages can and will occur; with proper policy, legal and practical adjustments, the negative impacts of such shortages on the LC/CGF may be partially alleviated. In some instances, it may be possible to link the availability of funds to their use in connection with the LC/CGF.

In general, policies, laws or practices that tend to augment available liquidity can be expected to have a favorable impact on LC/CGF operations. A greater supply of funds must inevitably increase the chances that some part of the total will reach SME borrowers who will partially secure their loans through the LC/CGF.

The converse, of course, is also true. The primary areas in which policies, laws and practices have a direct, positive or negative impact on liquidity are interest rates, banking regulations, taxes, and the use of foreign credit. Following are descriptions of the liquidity impacts. Where appropriate, recommendations are offered to encourage improvements.

a. Interest Rates

Interest rates on savings are among the most direct means of attracting system liquidity. Higher rates provide greater incentive to save rather than to spend or to save abroad. Interest rates on savings in Guatemala are determined largely by policy related to the interest rates which may be charged on loans. Current policy imposes a relatively low ceiling on lending rates, and after deducting margins, banks are not usually in a position to offer attractive rates to savers. This has been a general deterrent to adequate savings mobilization in Guatemala, as has the lack of alternative money instruments that might yield rates sufficiently attractive to cause savers to invest and thereby provide greater system liquidity.

The monetary authorities have not been inclined to change policies to liberalize interest rates or to encourage and approve the creation of new, higher yielding money instruments. To some extent, particularly when the GOG is struggling to maintain financial stability, it could be counter-productive to liberalize the interest rate structure and to introduce new money instruments. Such policy changes can and should, however, be effected gradually.[1]

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[1] On June 23, 1988, the Monetary Board did, in fact, raise lending and savings rate ceilings by two percentage points to 16% and 13%, respectively. Official statistics report annual inflation of around 10% which would indicate real, positive interest now at around 6%. This inflation rate, however, is probably understated

The appropriate vehicle for initiating the necessary dialogue with the GOG and ultimately for helping to work out the details of new interest rate policies as well as other policies to enhance liquidity, should be the Chamber of Finance (Camara de Finanzas). As a first step in this regard, the Chamber should carry out its own study of the potential benefits and costs to Guatemala of liberalized interest rate and financial market policies. It should then seek a consensus from its members, including bankers, insurance companies and others, as to the merits and characteristics of the most appropriate new policies. The results of the study and consensus might then be presented to the Monetary Board. The ensuing dialogue and policy actions, although not related to LC/CGF operations by themselves, can only benefit these operations if they succeed in enhancing liquidity.

b. Banking Regulations

The key banking regulations which affect liquidity and therefore have a bearing on the operations of the LC/CGF are those that relate to capital requirements, reserve requirements and portfolio expansion restrictions. Broad liberalization of these regulations is not really necessary. Capital account to asset requirements in Guatemala do not unreasonably restrict liquidity. Reserve requirements, as in most banking systems, are adjustable to create or limit liquidity; in this sense, they are a flexible policy tool as opposed to a set policy. Portfolio expansion restrictions are also a tool, used in tandem with other measures to limit liquidity over a short period of time.

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and will almost surely increase by at least six percentage points in the next few months, following the recent devaluation. As a consequence, unless interest rates are further increased, it will still be relatively unattractive to maintain local savings.

None of these banking regulations will or should be changed simply to free up liquidity for loans under the LC/CGF. A case can be made, however, for exempting LC/CGF loan guarantee amounts from capital, reserve and portfolio expansion requirement calculations as these amounts are, in effect, cash collateral. Such exemption would automatically translate to an equal increase in bank liquidity, and most importantly, would make it very attractive to have SME, LC/CGF guarantied loans in a bank's portfolio.

By way of illustration, if a bank made only this type of loan, it could effectively double its lending limit, assuming all of its loans were 50% guarantied under the LC/CGF. Again, the Chamber of Finance, in coordination with the Banker's Association, should prepare a study to show the benefits and drawbacks of allowing such exemptions; the Chamber should discuss the results with the Superintendency of Banks, the Central Bank and the Monetary Board.

Another initiative worth exploring would be the establishment of a regulation(s) that would require or encourage banks to maintain a small percentage of their portfolios in loans to SMEs. This would increase liquidity available specifically for LC/CGF operations; it would also provide an incentive to banks to use the LC/CGF in order to ensure that their required SME loans are satisfactorily collateralized. The corresponding approach to the Monetary Authorities will only succeed however if the commercial bankers themselves, through their Association and the Chamber of Finance, develop and justify a proposal.

c. Taxes

The primary tax issue bearing on liquidity concerns tax laws that favor bank deposits and discourage investment in corporate paper. Specifically, current tax laws treat interest on corporate bonds or other instruments as taxable while leaving interest earned on bank deposits tax-free. The result is to discourage investors from putting any significant part of their savings into corporate paper and hence to limit liquidity in the system.

The Chamber, in its research and its approach to the monetary authorities, should factor in this tax issue, considering perhaps the possibility of special tax treatment for new SME corporate issues partially or fully guarantied through the LC/CGF. Such paper would have characteristics similar to FHA bonds, and like those bonds (which generate liquidity for the construction industry), SME issues would generate liquidity for its "issuers", the small and medium entrepreneurs. (In the U.S., under the Small Business Administration Credit Guarantee Program, SME guaranteed paper is sold into a secondary market as government backed securities.)

d. Use of Foreign Credit

Liquidity sourced in the use of foreign credit lines is not subject to portfolio expansion limits. Consequently, the use of such lines becomes particularly attractive to SME borrowers in periods of relative illiquidity. Availability of the LC/CGF should also be interesting to foreign lenders, especially CABEI, IDB and IBRD, because loan guarantees can help to ensure movement of their lines to SMEs.

For both of these reasons, the LC/CGF Administrator and representatives from the Chamber of Finance, CAEM, the Exporter's

Guild (Gremial) and the Guatemalan Management Association (AGG) should become familiar with the foreign credit lines and inform representatives from the foreign lending institutions of the LC/CGF. The resulting exchange of information will facilitate promotion of liquidity for LC/CGF operations as both parties pursue their respective programs through local financial institutions.

## 2. Impact on Risk/Reward and Cost/Benefit Calculations

The impact of policies, laws and practices on calculations of risk/reward and cost/benefit are far more critical than their impact on liquidity for the LC/CGF. Stated simply, if policies, laws or practices entail perceived increases in risks or costs and/or decreases in rewards or benefits, financial institutions will not use the LC/CGF. Significantly, a number of the changes in policy or law that would tend to increase liquidity do so precisely because they increase benefits or reduce costs. Thus, a change that might effectively reduce bank capital or reserve requirements could be seen as a benefit derived from making loans to SMEs guarantied through the LC/CGF.

In the view of many bankers in Guatemala, making loans to SMEs entails a significant risk and a high cost. The risk is that the SME borrowers will not be able to repay loans. The high cost relates to the fact that the average size of an SME loan under the LC/CGF may be too small. As a consequence, the "scale" economy of doing large loans, bankers claim, is lost. The average administrative cost including credit analysis, collateral appraisal, loan documentation and the respective time values of such activities, will theoretically rise for every additional unit of loans to SMEs.

The principal offset to the risk of lending to SMEs is provided by the LC/CGF itself through its guarantees. (Lobbying for a

relaxation of the guarantee requirements under the banking law has not been successful to date, but should probably be continued through the Chamber of Finance.)

There is no genuine offset to the higher administrative cost of loans to SMEs, except to treat such costs as necessary in order to maintain a certain portfolio mix -- especially if this mix is required by law and/or because it will help to achieve a more satisfactory deposit and service base. In this sense, banks have an incentive to use the LC/CGF because it raises the safety of lending to SMEs in circumstances where insufficient collateral may be the major deterrent to making such loans.

Beyond the impacts described, the question that must be answered is which additional policies, laws or practices will tend to increase rewards or benefits and reduce risks or costs.

The most important reward for lenders is net income, derived in the first instance from the rate of interest they may charge for their loans and any other charges they may assess such as fees or commissions. Authorizations for increased interest charges and/or fees and commissions on SME loans would clearly make such loans more attractive. On the other hand, increased charges could make borrowing less attractive to SMEs and would require discriminatory official definition of SMEs. Nonetheless, in the U.S. and elsewhere, different rates and charges tend to reflect relative credit-worthiness. There is no reason that similar arrangements could not be undertaken in Guatemala by allowing banks to distinguish "prime" borrowers from SME borrowers who might have to pay a "prime" rate plus some additional points on their loans.

A simpler way of increasing lenders' income rewards is to increase their spread by lowering the cost of funds instead of increasing interest or other charges. This could be done by lowering the

discount or rediscount rates charged by the Central Bank (Bank of Guatemala) on funds for SME loans. (A special SME credit line could be established in the Bank of Guatemala to fund such loans.) The Chamber of Finance could prepare a study on the effects of such a policy prior to initiating discussions with monetary authorities.

A possible means of reducing or offsetting costs for lenders would be to have the LC/CGF pay a portion of the administrative costs of lending to SMEs. This could be netted out of the guarantee fees for use of the fund.

In the final analysis, it will probably be found that changes in policies and laws -- unless they are major changes -- will matter less for the LC/CGF than will changes in practices. This means that increased use of the LC/CGF will depend upon lenders discovering for themselves that using the fund is profitable and that lending to SMEs can have collateral benefits.

These benefits will include attracting a new depositor base and a new constituency for banks' retail services. As borrowers, SME clients should be far more inclined to deposit their funds and use the services of their lending bank than might otherwise be the case. The process of discovery for banks in this respect will take time. But with "peer persuasion" from the Chamber of Finance, the Bankers Association and from each other, lenders should gradually begin to use the LC/CGF and profit from its use.

3. Training for Management of the LC/CGF

Proper management of the LC/CGF should not require extensive training. Rather, administrative personnel should receive intensive, repetitive training to make sure they are thoroughly familiar with all procedural and documentary facets of the LC/CGF.

The training ought to consist of two phases. The first phase should include examination, analysis and checklisting of all procedures and documents related to both the Project Agreement/Operations Mechanism and the Trust Fund Arrangement. (As currently envisioned, interface with the Trust Fund(s) will be essentially limited to extending instructions to the Fund(s) for guarantee payments.)

The second phase of training should involve a series of role playing exercises, designed to treat both normal and exceptional examples of applications, claims, fee handling and record keeping. For this purpose the Administrator and A.I.D. should prepare a variety of hypothetical cases. The "trainee" should be required to complete his "course" by training his own understudy in the Fund Administrator's office.

## C. Practical Solutions to Bottlenecks

### 1. Promotion and Marketing of the LC/CGF

These activities should be carried out by the Chamber of Finance and/or Banker's Association if they are to be effective and broad-based. Promotional details of publicizing the LC/CGF to SME borrowers will have to be coordinated with the details of marketing the fund to financial institutions. This effort will require literature-brochures for banking officials, and newspaper and other media notices for the potential SME borrowers.

The content of all public communications should be clear and brief, encouraging medium and small entrepreneurs to approach their banks for guarantee details. Definitions of qualifying borrowers, purposes, tenors and costs should be left to the bankers in their meetings with SMEs. In order to further encourage bankers in marketing the LC/CGF, A.I.D. should reimburse the institutions for

their own advertising of the Fund.

2. The Bank of Guatemala

Beyond keeping the Bank of Guatemala (BOG) informed of the progress of the LC/CGF and making sure that the Fund does not violate any banking laws or regulations, it would be premature at this time to involve the BOG in Fund activities. Active involvement of the BOG could discourage lenders, and SME borrowers could misinterpret the Fund as being a Central Bank program. Over time, however, the BOG should be approached in connection with the goal of attaining capital and reserve requirement exemption for LC/CGF operations. It should also be approached to consider special programs, including reduced discount rates to support loans to SMEs.

3. Local Institutional Investor Market

As in the case of risk/reward and cost/benefit calculations by banks, a local institutional investor market supportive of the LC/CGF will only emerge if policies and laws are conducive to increased opportunities for profit. At present, one of the most commonly known institutional investor groups, the insurance companies, is restricted in the sense that 40% of their technical reserves must by law be invested in government securities. Pension funds are not a significant factor in Guatemala and mutual funds are virtually non-existent. Bonded warehouse operations are virtually all connected to banking groups.

Guatemalan policies and laws discourage the formation of an institutional investor market. On the one hand, they do not support the growth of investment options. On the other hand, they limit (through specific institutional laws or simply through tax laws) the ability or desire of institutions to invest even in existing instruments. Prospects for any significant change in this

respect are not very great.

Nonetheless, in consideration of the fact that the Trust Fund itself is actually an "institutional investor", it could perhaps create one or more investment "funds" open to participation from other institutions such as insurance companies. In coordination with the Chamber of Finance, these new "institutional investors" could study and lobby for the creation of new investment instrument and yield opportunities. Such activities will not, from the outset, directly benefit the LC/CGF operations. Only indirectly will they tend to mobilize investment resources and increase liquidity available for SME loans. Over time, however, it is possible that SME loan paper itself, or just the LC/CGF collateralized portion of such paper, might be sold into a secondary market with attractive yields for institutional investors.

## III. LC/CGF INTERFACE WITH OTHER PED COMPONENTS

### A. Loan Procurement Training - AGG

In order to enhance utilization of the LC/CGF, SME borrowers should receive loan procurement training at the Guatemalan Management Association (AGG). A specific short-course should be designed for this purpose. It ought to include units on standard loan application data requirements, presentation formats, collateral valuation and negotiation, cash flow analysis and pre-selection of lenders. The course ought to provide all necessary detail on the operation of the LC/CGF so that SME borrowers can effectively respond to lenders in resolving the guarantee or collateral issue. The course should include role playing exercises to give entrepreneurs practice in their presentations. Finally, the course should provide entrepreneurs with a basic understanding of what the lenders are looking for, ranging from collateral to yield, so that they will be better able to negotiate their loans.

### B. Export Finance Guidance - Guild

The LC/CGF should be thoroughly explained to Guild (Gremial) personnel so that they may, in turn, advise the membership. This should be done in connection with basic export finance training, including letter of credit techniques. Special attention should be paid to using the LC/CGF to secure pre-export finance. Consideration should also be given to encouraging banks to accept letters of credit together with Fund guarantees to collateralize revolving loans where the letters of credit pay off the first part of the obligation, leaving the balance secured by the Fund guarantee. This will reduce or eliminate the need to provide additional collateral.

### C. Free Zones

The LC/CGF should consider the possibility of providing extraordinary guarantees to help secure finance for the establishment of free trade zone buildings that will house small and medium enterprises. Additionally, special SME finance and guarantee programs should be made available to promote SME investments in FTZs. CAEM ought to develop such programs together with private Free Trade Zone sponsors.

### D. Privatization

Extraordinary guarantees should also be considered to help secure necessary funding for privatization efforts. In this regard, special efforts should be undertaken to involve small and medium entrepreneurs, possibly by forming syndicates of such investors to obtain equity interests in privatized businesses. CAEM would also be the most appropriate vehicle to develop such initiatives.

### E. Debt/Equity Swaps

Eventually, the LC/CGF should be made available to partially secure financing for businesses that come about as the result of debt/equity swaps where such businesses are owned by SMEs. Again, syndicates could eventually be promoted for this purpose through CAEM. In all likelihood, a program to this end would have to be developed with the Bank of Guatemala because of its direct involvement in debt/equity swaps. SME participation in benefits from swaps could, in fact, become an important incentive for effective Bank of Guatemala involvement.

APPENDIX A

## FINANCIAL MARKETS DEVELOPMENT PROGRAM
## PRIVATE ENTERPRISE DEVELOPMENT PROJECT PED 520-0341

### SCOPE OF WORK

Aimed at assisting in the successful pre-implementation of the local currency credit guaranty line (LC/CGL) of the PED Project No. 520-0341, and the PRE Guaranty Fund start-up, the consultant will carry out the following assignments:

### I. CREDIT GUARANTY FACILITIES

A. Assist in the design and negotiations of the LC/CGL as follows:

1. Review and complete pertinent documentation. Verify and ensure compatibility with PRE line documentation.

2. Analyze viability of administrative arrangements with local private banks. Propose necessary adjustments.

3. Analyze trust fund investment arrangements. Propose necessary adjustments.

4. Verify Bank of Guatemala's role in and understanding of the facility. Propose any further recommendation as necessary.

B. Analyze and report on the status of the PRE Credit Guaranty Line.

1. Identify any significant operational problems and propose solutions.

2. Measure rate of new bank participation and propose mechanisms and budget to accelerate interest and participation of additional financial institutions.

3. Design a procedure for ongoing qualitative measurement of bank and subborrower utilization of the facility. Ascertain initial measurements as appropriate.

4. Verify Bank of Guatemala's understanding and view of the facility. Propose any further consultation if estimated necessary.

## II. FINANCIAL MARKET DATA BASE AND LEGAL AND POLICY ISSUES PERTINENT TO THE OPERATION OF THE LC/CGL

### A. Data Base

1. Catalogue and abstract all available credit demand studies relevant to the local currency guaranty fund.

2. Develop a LC/CGL data collection methodology and a data base format as appropriate, covering working capital and fixed-asset credit demand for major subsectors of Guatemala's small and medium enterprise sector.

3. Initiate and recommend follow-up in the establishment and maintenance of the LC/CGL data base.

### B. Policy, Legal and Practice Issues

1. Catalogue all relevant policy, laws and practices (traditions) that affect LC/CGL operations.

2. Identify and describe how these policies, laws and practices impede such operations with specific reference to interest rates, reserve requirements, rediscount rates and other pertinent aspects of monetary and fiscal management.

3. Recommend approaches to GOG for undertaking comprehensive policy dialogue that will lead to changes in existing policies and laws as well as the establishment of new policies and laws conducive to broad-based improvements in the operations of the LC/CGL.

4. Propose an appropriate training plan related to the management of the LC/CGL.

### C. Practical Solutions to Bottlenecks and Inertia

1. Design and assist in the promotion and marketing of the LC/CGL.

2. Propose means of encouraging the Bank of Guatemala in helping improve the LC/CGL operations.

3. Recommend means to develop, and initiate promotion of a local institutional investor market supportive of the LC/CGL.

## III. LC/CGL INTERFACE WITH OTHER PED COMPONENTS

Identify and describe means to achieve the LC/CGL interface with other PED activities, for example:

A. Loan procurement training input and assistance for small and medium enterprises through AGG.

B. Pre-Export and export finance guidance to non - traditional exporters through the Guild and FODEX.

C. Development of appropriate financial market research, development and promotion through the Guatemalan Chamber of Finance and the Bankers Association.

D. Development of viable financing for the creation and operation of free trade zones as well as for investors operating in the zones.

E. Innovative financing, including new financial instruments such as debt-equity swaps, in order to support privatization efforts.

## IV. REQUIRED REPORT AND DELIVERY

The consultant will submit a draft document in English, incorporating report on tasks in I, II and III above, to the Deputy Chief, O/PSP, by the end of the fourth workweek for review by the PED project committee. A final report, in form and substance acceptable to USAID, will be provided to O/PSP at the end of the fifth workweek. Consultant must conduct research to gather information as required to produce a comprehensive report, and should draw on, but not be limited to, documents top be made available by O/PSP.

APPENDIX B

BORRADOR

CONVENIO DE PROYECTO
FONDO DE GARANTIA PED-341

CONVENIO DE PROYECTO

Este CONVENIO DE PROYECTO ("Convenio") se celebra a los ____ días del mes de _____ de 198__ entre la Cámara Empresarial de Guatemala, asociación civil con personería jurídica que fue organizada y existe dentro de las leyes de Guatemala, Los Estados Unidos de América, actuando por medio de la Agencia para el Desarrollo Internacional ("A.I.D."), y _____ _____, institución financiera privada con personería jurídica que fue organizada y existe dentro de las leyes de Guatemala y que cumple con los requisitos de elegibilidad que se establecen en este Convenio y su Anexo. Las representaciones que ejercitan los abajo firmantes son.....

Artículo 1. El Convenio

Sección 1.1 Antecedentes. Para el fortalecimiento de la balanza de pagos de Guatemala, el Gobierno de los Estados Unidos de América otorgó al Gobierno de Guatemala mediante (documento) una donación de cincuenta y seis millones de dólares (US$56,000,000), la cual, al ser convertida a moneda nacional se destinaría a un programa de desarrollo económico que fue aceptado por el Gobierno de la República de Guatemala. Uno de los proyectos contenidos en dicho programa es el de formar un Fondo de Garantía para préstamos otorgados a la pequeña y mediana empresa ("Fondo de Garantía"). Dicho Fondo sería constituido mediante contrato(s) de Fideicomiso. Mediante (documento) celebrado el ____ de _____ de 198__, entre la A.I.D. y CAEM, ésta fue

designada para llevar a cabo un programa de desarrollo empresarial el cual incluye como uno de sus elementos el Proyecto de Fondo de Garantía.

Sección 1.2 Propósito del Proyecto. El Proyecto tiene el propósito de lograr un aumento en el número y valor de créditos concedidos por instituciones financieras privadas a las empresas pequeñas y medianas de Guatemala. Para el efecto, a través del Fondo de Garantía se otorgan a las instituciones financieras del país, garantías que cubren hasta el cincuenta por ciento (50%) de los montos de los préstamos que concedan esas instituciones a las pequeñas y medianas empresas para los fines que más adelante se especifican.

Artículo 2. Definiciones

Los siguientes términos, cuando se encuentran en mayúsculas tendrán las definiciones indicadas en el texto de este Convenio y sus Anexos, a menos que el contexto claramente indique lo contrario:

Sección 2.1 "Administrador". Es (la Cámara de Finanzas, debidamente designada por CAEM para el efecto), el designado de CAEM o ella misma. Tiene la responsabilidad general de supervisar la operación del Fondo de Garantía y las responsabilidades específicas que se establecen en el Anexo I a este Convenio.

Sección 2.2 "Institución Financiera Participante" ("IFP"). Es (nombre de la institución financiera que firma este Convenio) o cualquiera otra

institución financiera privada de Guatemala que cumple con los requisitos para participar en el Proyecto de Fondo de Garantía y que para el efecto suscriba un Convenio de Proyecto sustancialmente en la forma del presente. Los criterios para determinar la elegibilidad de una institución para participar en el Proyecto se establecen en el Anexo I a este Convenio.

Sección 2.3 "Mecanismo Operativo del Fondo de Garantía PED-341". Es Anexo I a este Convenio y forma parte del mismo. Establece los términos, condiciones y procedimientos para la operación del Fondo de Garantía PED-341. Puede modificarse mediante simple cruce de cartas.

Artículo 3. Recursos para el Proyecto

Sección 3.1 Recursos de la A.I.D. La A.I.D. conviene en afectar, a través de Fideicomiso(s), para la constitución del Fondo de Garantía, una suma global no menor de CATORCE MILLONES DE QUETZALES (Q14,000,000).

Sección 3.2 Recursos de Las Instituciones Financieras Participantes. La Institución Financiera Participante conviene en proporcionar un cien por ciento (100%) de los fondos para cada uno de los préstamos que otorgue de conformidad con su participación en el Proyecto. Conviene además en invertir las recuperaciones de capital de dichos préstamos en nuevos préstamos también de conformidad con los lineamientos del Proyecto durante la vida del presente Convenio.

Sección 3.3 Recursos del Administrador. El Administrador conviene en proporcionar los apoyos necesarios para llevar a cabo el Proyecto de manera eficiente y oportuno de conformidad con los términos de este Convenio y su Anexo.

Artículo 4. Cupo para la Institución Financiera Participante

El Administrador conviene en asignar a la Institución Financiera Participante un cupo cuyo monto representará el nivel máximo acumulado de garantía que puede utilizar la I.F.P. en cualquier momento durante la vigencia de este Convenio. El procedimiento para esta asignación se establece en Anexo I a este Convenio.

Artículo 5. Costos de las Garantías

Los costos a pagar por las garantías otorgadas del Fondo de Garantía a la I.F.P. se establecen en Anexo I a este Convenio. De igual manera se establece el procedimiento para el cálculo y cancelación de los costos.

Artículo 6. Compromisos Generales

Sección 6.1 Monitoreo del Proyecto. Las Partes convienen en reunirse cada mes durante el primer año de vigencia de este Convenio y por lo menos cuatro veces al año en los subsiguientes años a fin de revisar el Proyecto y buscar soluciones a los problemas detectados.

Sección 6.2 Evaluación del Proyecto. Excepto que las Partes convenga algo diferente por escrito, la A.I.D. será responsable de evaluar el Proyecto y absorberá los costos de tal evaluación. Se evaluará el progreso del Proyecto contra los objetivos del mismo y se identificarán sus problemas y posibles soluciones.

Sección 6.3 Estados Financieros, Informes, Registros, Inspecciones. La I.F.P. conviene en preparar y proporcionar al Administrador y/o a la A.I.D. sus estados financieros auditados anuales mas los informes y/o registros relacionados con el Proyecto y que se especifican en el Anexo I a este Convenio. La I.F.P. conviene además en permitir a representantes autorizados del Administrador y de la A.I.D. inspeccionar periódicamente dichos informes y/o registros.

Sección 6.4 Publicidad. El Administrador y la A.I.D. darán publicidad apropiada al Proyecto de Fondo de Garantía y absorberán el costo de la misma. La I.F.P., por su parte, conviene en hacer conocer los detalles del Proyecto a todos sus directores y oficiales.

Artículo 7. Sustitución del Administrador. En caso que la A.I.D. o el Administrador lo consideren conveniente, puede ser sustituido el Administrador previo aviso apropiado entre las Partes para el efecto y autorización por acto del nuevo Administrador.

Artículo 8. Descalificación o Retiro de la Institución Financiera Participante. En caso que la A.I.D. considere que la I.F.P. há incumplido con cualquier de los términos y condiciones de este Convenio y su Anexo o que haya sufrido cambios que pudieran imposibilitar el cumplimiento con sus obligaciones de conformidad con este Convenio y su Anexo entonces la A.I.D., previo aviso apropiado al Administrador, puede suspender o cancelar la participación de la I.F.P. en el Proyecto del Fondo de Garantía.

En caso que la I.F.P. desee retirarse del presente Convenio, puede hacerlo previo aviso de sesenta días a las Partes y después de comprobar que se haya cumplido con todas sus obligaciones derivadas del Convenio.

Artículo 9. Plazo. El plazo de este Convenio es de _____ contados a partir de _____.

Artículo 10. Varios

Sección 10.1 Interpretación. Arbitraje

Sección 10.2 Comunicaciones.....

Sección 10.3 Enmiendas.....

EN FE DE LO CUAL, el Administrador, la Institutción Financiera Participante y los Estados Unidos de Norte América, cada uno actuando por medio de sus representantes debidamente autorizados, celebran este Convenio que será firmado por ellos y entrará en vigor en las fechas abajo indicadas.

Administrador: _____

Por: _____

Título: _____ _____

Firma Letra de Molde

Fecha: _____

Institución Financiera Participante: _____

Por: _____ _____

Firma Letra de Molde

Título _____

Fecha: _____

Estados Unidos de Norte América: Agencia para el Desarrollo Internacional (A.I.D.)

Por: _____ _____

Firma Letra de Molde

Título: _____

Fecha: _____

ANEXO I

# MECANISMO OPERATIVO DEL FONDO DE GARANTIA PED-341

## CAPITULO I

## OBJETO

Artículo 1o. El objeto de este instructivo es el de fijar el mecanismo operativo, términos y condiciones que regulan el Fondo de Garantía PED-341. El Fondo de Garantía PED-341 está constituído mediante fideicomisos establecidos en Bancos del Sistema para el propósito; la participación de la A.I.D., el Administrador del Fondo y la(s) Institucion(es) Financiera(s) Participante(s) (I.F.P.) se establece en el presente Convenio al Proyecto del cual este instructivo forma parte.

## CAPITULO II

## ADMINISTRACION

Artículo 2o. El Fondo de Garantía PED-341 opera bajo la supervisión del Administrador que es la Cámara Empresarial de Guatemala (CAEM) o su designado debidamente autorizado por acto para el propósito. Un representante de la A.I.D., debidamente autorizado para este efecto, se integra en la administración del Fondo. Dicho representante prestará asesoría técnica al Administrador, en especial para tratar decisiones sobre casos que no sean de carácter administrativo dentro del contexto del presente Convenio e

Instructivo y/o que, de otra manera, no hayan sido contemplados o previstos dentro de lo especificado en el Convenio e Instructivo. El Administrador tiene las siguientes responsabilidades principales:

a) Verificar la elegibilidad de la I.F.P. para participar en el Proyecto de Fondo de Garantía mediante recibo y registro de los documentos que mas adelante se especifican. El Administrador verificará que la I.F.P. cumple con los requisitos de elegibilidad por lo menos una vez al año durante la vida del Convenio del cual este instructivo forma parte,

b) Supervisar la asignación a la I.F.P. de un cupo de garantía que representa el nivel máximo acumulado de garantía que puede utilizar la I.F.P. en cualquier momento durante la vigencia del presente Convenio. Para este efecto la I.F.P., por medio de una carta dirigida al Administrador, indicará cual es el cupo que estima necesario de conformidad con sus planes de conceder préstamos a la pequeña y mediana empresa. El Administrador, a su vez, por medio de una carta dirigida a la I.F.P. le indicará el cupo que le ha sido asignado. Para los casos de posible ampliación o reducción de los cupos, se procederá en la misma forma, es decir por medio de cruce de cartas.

c) Aprobar o denegar, dentro de los diez días hábiles después de su recepción, las solicitudes de garantía presentadas por la I.F.P. de conformidad con el procedimiento indicado en el Artículo ___ de este instructivo.

d) Recibir y velar que los Documentos de Reclamo presentados por la I.F.P. sean de conformidad con lo establecido en el Artículo ____ de este instructivo.

e) Girar instrucciones para efectuar pagos en favor de la I.F.P. en concepto de garantías registradas contra reclamos debidamente documentados.

f) Mantener, de conformidad con los principios y prácticas de contabilidad generalmente aceptados, todos los libros y registros relacionados con el Proyecto y con el Convenio del cual este instructivo forma parte, hasta tres (3) años después del vencimiento de éste. Igualmente preparar y presentar aquellos informes que razonablemente solicite la A.I.D.

## CAPITULO III

## ELEGIBILIDAD PARA PARTICIPACION EN EL FONDO DE GARANTIA PED-341

Artículo 3o. Para ser considerada como Institución Financiera Participante (I.F.P.) en el Proyecto del Fondo de Garantía PED-341, la institución financiera debera:

a) Ser facultada para operar y estar operando como una entidad crediticia privada con animo de lucro dentro del sistema bancario de Guatemala,

incluyendo tener al día todas las licencias y otras autorizaciones de las autoridades monetarias y bancarias del sistema para este efecto.

b) Haber demostrado ser rentable.....

c) Que el monto de los créditos perjudicados no exceda de un diez por ciento (10%) del total de su cartera de préstamos.

d) Contar con normas y procedimientos para la aprobación, concesión, cobro y supervisión de los créditos aceptables a la A.I.D.

e) Haber cumplido con todas las leyes y reglamentos de Guatemala aplicables, lo que deberá probarse por medio de los estados financieros de la institución sometidos a auditoría independiente.

## CAPITULO IV

## ELEGIBILIDAD DE LOS PRESTAMOS A GARANTIZAR

Artículo 4o. Para ser elegible a recibir garantía de conformidad con el Fondo de Garantía PED-341, un préstamo debe cumplir con los siguientes requisitos:

a) El préstamo debe ser para otorgarse en favor y para la utilización exclusiva de una empresa privada guatemalteca o persona natural guatemalteca, cuyos activos totales incluyendo terrenos y edificios no excedan de un total equivalente en moneda nacional.

dólares de los Estados Unidos de Norte América (US$_____), calculados de conformidad con la tasa de cambio en el mercado bancario en la fecha del préstamo; y cuyo número total de empleados no exceda de _____ o su equivalente en términos de tiempo completo.

b) El monto total del capital del préstamo a un solo prestatario no deberá ser mayor que el equivalente en Moneda Nacional de _____ dólares de los Estados Unidos de Norteamérica (US$_____, calculados de conformidad con la tasa de cambio en el mercado bancario en la fecha del préstamo.

c) El préstamo no puede otorgarse para refinanciar un préstamo anterior.

d) El préstamo debe ser para otorgarse a una tasa de interés no inferior a la tasa de mercado de conformidad con las regulaciones y/o publicaciones de las autoridades monetarias y bancarias de Guatemala.

e) Los fondos del préstamo deben ser para utilizarse en financiar la producción, procesamiento o distribución de productos agrícolas, industriales y/o artesanales.

f) Los fondos del préstamo no pueden utilizarse para financiar actividades relacionadas con .....

## CAPITULO V

## OTORGAMIENTO Y REGISTRO DE GARANTIAS

Artículo 5o. Para iniciar su participación y obtener garantías del Proyecto de Fondo de Garantía, la Institución Financiera Participante deberá:

a) En caso de la inscripción dirigirse al Administrador por medio de una carta en la cual:

1. Afirma que esa Institución cumple con todos los requisitos de elegibilidad señalados en el Capítulo III de este instructivo.

2. Solicita cupo de garantía, señalando el monto de cupo deseado siempre y cuando este monto no exceda del equivalente en Moneda Nacional de _____ dólares de los Estados Unidos de Norte América (US$_____.

3. Incluir con la carta los estados financieros auditados de la I.F.P. por los últimos tres (3) años.

El Administrador asignará un cupo para la I.F.P. en base de la solicitud y de la disponibilidad de cupos en el Fondo de Garantía. La asignación se hará constar mediante una carta.

b) Para obtener garantías específicas enviar una carta en la cual se describe:

1. Uno o más préstamos para los cuales solicita garantía de hasta 50% del monto de cada uno. Para este efecto debe adjuntarse una hoja separada por cada préstamo en la cual debe señalar:

   - El nombre completo y las generales del usuario
   - Domicilio del usuario
   - Destino del préstamo
   - Garantías que ofrece el usuario
   - Plazo del préstamo y calendario de amortización
   - Monto del préstamo
   - Monto de la garantía que se solicita
   - Número de identificación que tendrá el préstamo en los libros de la I.F.P.

2. Afirma que ha aplicado y seguirá aplicando sus procedimientos normales de análisis crediticia, aprobación y seguimiento en el manejo de cualquier préstamo garantizado a través del Fondo de Garantía PED-341.

El Administrador aprobará las garantías de los préstamos mediante una carta. La misma servirá como certificación de la garantía.

[illegible] En el caso de que el Administrador deniegue el otorgamiento de [illegible] I.F.P. podrá pedir la reconsideración dentro de [illegible] días [illegible]

días hábiles siguientes a la fecha de notificación, presentando las pruebas o informaciones complementarias que estime convenientes. Si el Administrador reitera su denegación, esta segunda decisión será inapelable.

Artículo 7o. Los préstamos que la I.F.P. otorgue con garantía del Fondo de Garantía PED 341, deberán incluirse en un registro especial para el efecto en adición a los registros normales de cartera.

Artículo 8o. Después del vencimiento y último pago de cada préstamo garantizado del Fondo de Garantía, la I.F.P. notificará al Administrador.

## CAPITULO VI

## PROCEDIMIENTO PARA EL PAGO DE GARANTIAS

Artículo 9o. La I.F.P. podrá presentar un reclamo de pago de la garantía de cualquier préstamo únicamente después de transcurrido un mínimo de Ciento Ochenta (180) días a partir de la fecha de incumplimiento del usuario. El reclamo no puede exceder el porcentaje del capital original ganrantizado sobre el saldo adeudado y debe documentarse mediante copia de la carta de garantía emitida por el Administrador junto con otra carta dirigida al Administrador en la cual la I.F.P.:

a) Identifica el préstamo, su monto original, el monto del capital en mora, el saldo total adeudado y la fecha en que venció la obligación.

b) Afirma, indicando las acciones pertinentes, que ha agotado todos los procedimientos de cobro extrajudiciales para lograr la recuperación del préstamo.

c) Compruebe que ha iniciado la demanda judicial para lograr la recuperación total del préstamo, adjuntando para el efecto, una copia del memorial de demanda correspondiente, debidamente sellado y en el cual se hace constar la acción judicial contra el prestatario; el título ejecutivo pertinente mas los fundamentos de derecho en los cuales se base la acción judicial; y la petición al Tribunal.

d) Se obliga a reintegrar al Fondo de Garantía la mitad de la suma que recupere en el proceso de cobro después de deducir de las recuperaciones el monto de los intereses vencidos y no pagados hasta el momento del reclamo mas los gastos razonables de cobro.

e) Se obliga a seguir el proceso judicial durante un período mínimo de tres (3) años.

Artículo 10. Satisfactoriamente cumplidos los requisitos señalados en el Artículo anterior el Administrador emitirá su resolución en el término de diez (10) días contados a la fecha de recepción de los documentos correspondientes notificará a la I.F.P. y dará instrucciones para el pago de la garantía a la I.F.P.

## CAPITULO VII

## COSTOS

Artículo 11. El cupo y utilización de garantías de Fondo de Garantía tendrán los siguientes costos para la I.F.P.:

a) Una comisión por concepto de cupo del uno por ciento (1%) fijo, pagadero una sola vez sobre el monto del cupo asignado. Deberá cancelar esta comisión dentro de los diez (10) días hábiles después de recibir notificación del cupo asignado. En caso que el cupo sea aumentado, la I.F.P. deberá pagar una comisión adicional sobre el aumento también del uno por ciento (1%) pagadero una sola vez dentro de los diez (10) días hábiles después de la notificación aumento.

b) Una comisión por concepto de utilización de garantías del uno por ciento anual (1% p.a.) sobre el monto promedio diario - en base de un año de 365 días - de garantías emitidas en su favor de conformidad con el Fondo de Garantía PED-341. Esta comisión empezará a cargarse desde la fecha de emisión de la primera garantía y será pagadera cada 30 de junio y 31 de diciembre posterior y en el vencimiento del Convenio.

c) Una comisión por concepto de Administración de un cuarto por ciento (1/4%) sobre el monto promedio diario - en base de un año de 365 días - de garantías PED-341. Esta comisión empezará a cargarse desde la fecha de

emisión de la primera garantía y será pagadera cada 30 de junio y 31 de diciembre posterior y en el vencimiento del Convenio.

d) Cargos por concepto de pagos retrasados: En caso de pagos retrasados de cualesquiera cantidades adeudadas al Fondo de Garantía, se efectuará un cargo sobre la cantidad no pagada a la tasa del doce por ciento (12%) anual, cargado desde la fecha de vencimiento del pago hasta la fecha en que el pago sea recibido por el Fondo de Garantía.

Artículo 12. Todo los pagos de cantidades adeudadas al Fondo de Garantía serán hechos en Moneda Nacional, a nombre de la cuenta que el Administrador establezca para el efecto.

## CAPITULO VIII

## INFORMES

Artículo 13. La I.F.P. deberá proporcionar, mensualmente al Administrador, un informe que incluya la relación detallada de préstamos garantizados por el Fondo de Garantía PED-341 otorgados en el mes y de los que han sido amortizados en ese período de tiempo. Adicionalmente, en forma trimestral deberá presentar un informe de los pagos de garantía que haya recibido del Fondo y del progreso obtenido en las acciones judiciales correspondientes.

## CAPITULO IX

## DISPOSICIONES FINALES

Artículo 14. En los casos de solicitudes que no cumplen con los requerimientos en los Capítulos III o IV de este instructivo, el solicitante podrá, mediante una carta dirigida al Administrador, efectuar la consulta correspondiente. La carta deberá señalar los motivos específicos - en particular lo relacionado con impacto socio-económico - por los cuales el caso amerita exención de uno o más de los requerimientos.

Artículo 15. Cuando la I.F.P. lleque a tener como mora un 20% del monto adeudado en los préstamos garantizados por el Fondo de Garantía, el Administrador suspenderá el otorgamiento de nuevas garantías para aquella institución, sin perjuicio del compromiso ya adquirido sobre las garantías previamente emitidas. Si la I.F.P. no ha regularizado esta situación dentro de un plazo de seis (6) meses será descalificada para cualquier futura participación en el Proyecto del Fondo de Garantía PED-341.

Artículo 16. El presente instructivo podrá ser modificado mediante simple cruce de cartas.

APPENDIX C

CONTRATO DE FIDEICOMISO

B O R R A D O R

NUMERO _____ (____): En la Ciudad de Guatemala, el ____ de _____ de mil novecientos ochenta y ocho, ante mí: _____, Notario, comparece: a) por una parte el señor Anthony Cauterucci, ___ (generales) _____ en Representación de la Agencia para el Desarrollo Internacional, Misión Guatemala (A.I.D.); b) por la otra parte comparece el señor _____ (generales) _____ quien actúa en su carácter de Gerente General del Banco _____, calidad que acredita con su nombramiento, .....etc. Doy fé de ..... etc. .....que los otorgantes me aseguran ser de las generales indicadas y encontrarse en el libre ejercicio de sus derechos civiles; y por el presente acto otorgan el contrato de FIDEICOMISO contenido en las cláusulas siguientes: PRIMERA: ANTECEDENTES: Para el fortalecimiento de la balanza de pagos de Guatemala, el Gobierno de los Estados Unidos de América otorgó al Gobierno de Guatemala mediante (documento) una donación de Cincuenta y Seis Millones de Dólares (US$56,000,000), la cual al ser convertida a moneda nacional se destinaría a un programa de desarrollo económico que fue aceptado por el Gobierno de la República de Guatemala. Uno de los proyectos contenidos en dicho programa es el de formar un

Fondo de Garantía para préstamos otorgados a la pequeña y mediana empresa. Mediante __(documento)__ celebrado el ____ de _____ de 19____, entre la A.I.D. y la Cámara Empresarial de Guatemala (CAEM), ésta fue designada para llevar a cabo un programa de desarrollo empresarial el cual incluye como uno de sus elementos el proyecto del Fondo de Garantía para préstamos otorgados a la pequeña y mediana empresa. CAEM o su designado, tiene la responsabilidad dentro de este proyecto de administrar el mecanismo operativo del Fondo de Garantía. SEGUNDA: DEFINICIONES: Para los efectos de cumplimiento e interpretación del presente contrato, los términos que a continuación se designan significarán lo que de ellos se indica, salvo indicación expresa en contrario en el propio texto del contrato: a) FIDEICOMITENTE: Es la Agencia para Desarrollo Internacional (A.I.D.); b) JUNTA FIDEICOMITENTE: Es la junta que se forma con representantes de la A.I.D., de CAEM, y de la Cámara de Finanzas de Guatemala y tales otras instituciones o personas designadas por acto para el propósito. Participa en esta junta el fiduciario con voz pero sin voto. c) FIDUCIARIO: Fiduciario bajo el presente contrato es ..... . d) FIDEICOMISARIO: Es el mismo fideicomitente -la A.I.D.- o las personas naturales o jurídicas que el fideicomitente designe como tal. e) PATRIMONIO FIDEICOMITIDO: Es cualquier parte o la totalidad del patrimonio del Fondo de Garantía. Está constituído por los

bienes y/o derechos que se afectan bajo el presente Fideicomiso a los fines que más adelante se indican y que para ello se transmitan al fiduciario. f) EJERCICIO CONTABLE: El período comprendido entre el primero de enero al treintiuno de diciembre de cada año, excepto por lo que respecta al primero que comenzará a correr a partir de la fecha de la presente escritura hasta el treintiuno de diciembre próximo. TERCERA: CONSTITUCION DEL FIDEICOMISO: a) Por el presente acto el señor Anthony Cauterucci afecta, en nombre de la A.I.D., en calidad de patrimonio fideicometido, la suma de _____ que deberán destinarse a los fines que mas adelante se establecen. b) El patrimonio fideicometido según la literal anterior, quedará incrementado conforme el Fideicomitente afecte sumas adicionales para tal propósito, y con los rendimientos de las inversiones que se efectuén de la suma ahora recibida por el fiduciario, de acuerdo con las instrucciones que reciba de la Junta Fideicomitente. Por los incrementos al patrimonio fideicometido, no se requerirá la formalización en escrituras públicas adicionales, sino simplemente deberán registrarse en la cuenta del patrimonio fideicometido. CUARTA: DESTINO DEL PATRIMONIO FIDEICOMETIDO: El patrimonio fideicometido estará afectado en su totalidad, con excepción a los gastos y costos que más adelante se establecen, para garantizar hasta el 50% de préstamos otorgados a pequeñas y medianas empresas bajo el

proyecto de Fondo de Garantía. QUINTA: PLAZO: El plazo de este fideicomiso es de 10 años renovable contados a partir de la fecha de este contrato. SEXTA: ACEPTACION EXPRESA DEL FIDUCIARIO: Manifiesta el señor _____ en la personería que ejercita, que en nombre de su representada acepta expresamente la calidad de fiduciario del presente fideicomiso, según los términos y condiciones de este instrumento y las leyes sobre la materia. SEPTIMA: OBLIGACIONES DEL FIDUCIARIO: Además de las establecidas en la Ley y otras partes del presente contrato, el fiduciario tendrá las siguientes obligaciones: i) Establecer una cuenta específica que contenga el patrimonio fideicometido. ii) Con base en las resoluciones que recibe de la Junta Fideicomitente, pagar de esta cuenta a las instituciones financieras que se le indique, los montos de los saldos insolutos de préstamos no recuperados. iii) Con base en las instrucciones que recibe de la Junta Fideicomitente, invertir los recursos del patrimonio fideicometido no utilizados para pagar garantías o para cubrir gastos u otros costos. (SER MAS ESPECIFICO AQUI) iv) Recibir los pagos hechos por las instituciones financieras por concepto de recuperaciones de los montos de garantías pagadas por el Fondo de Garantía y abonarlos a la cuenta de patrimonio fideicometido. v) Recaudar los productos de las inversiones de los recursos del patrimonio fideicometido no utilizados para pagar garantías, gastos o costos y abonarlos al patrimonio

fideicometido. vi) Presentar, mensualmente, a la Junta Fideicomitente, los estados financieros del Fideicomiso y un relato de las actividades relevantes de su gestión. OCTAVA: Gastos del Fideicomiso: _____ como fiduciario desempeñará este cargo sin devengar renumeración alguna; los gastos en que incurra la Junta Fideicomitente y el Administrador serán cubiertos con recursos del Patrimonio Fideicometido para lo cual _____ como fiduciario efectuará los pagos correspondientes con base en las resoluciones que para el efecto emita la Junta Fideicomitente. NOVENA: DERECHOS DEL FIDUCIARIO: Además de los establecidos en la Ley y otras partes de este contrato, el fiduciario tendrá el siguiente derecho: Verificar con la Junta Fideicomitente, cualquier dato o información que sea útil o necesario para la ejecución del presente Fideicomiso. DECIMA: OBLIGACIONES DEL FIDEICOMITENTE: Además de las establecidas en la ley y otras partes del presente contrato, el Fideicomitente tendrá las siguientes obligaciones: i) Hacer entrega al fiduciario o a la entidad que éste le indique, la suma de dinero a que se oblique conforme el presente contrato de fideicomiso. ii) Designar su representante en la Junta Fideicomitente. iii) Aprobar o improbar las resoluciones de la Junta Fideicomitente que le sean elevadas para este efecto. DECIMOPRIMERA: OBLIGACIONES DE LA JUNTA FIDEICOMITENTE: Además de las establecidas en la Ley y en otras partes del presente contrato, la Junta

Fideicomitente tendrá las siguientes obligaciones: i) Revisar, modificar y aprobar los planes del fiduciario para invertir el patrimonio fideicometido. ii) Elevar para su decision, al fideicomitente toda resolución que no cuente con voto unanime en su favor por parte de los miembros votantes de la junta. iii) Entregar todas sus resoluciones al fideicomitente para su aprobación. DECIMOSEGUNDA: DERECHOS DE LA JUNTA FIDEICOMITENTE: Además de las establecidas en la ley y en otras partes del presente contrato, la Junta Fideicomitente tendrá los siguientes derechos: i) Aceptar o improbar las cuentas que presente el fiduciario en relación al fideicomiso, dentro de los quince días hábiles siguientes a la fecha en que éstas sean presentadas. Transcurrido dicho plazo sin manifestación alguna de la Junta Fideicomitante, se tendrán por aprobadas las cuentas presentadas por el fiduciario. ii) Remover y sustituir al fiduciario en caso de que éste incumpla con sus obligaciones de conformidad con este contrato. DECIMATERCERA: ACCIONES Y RECLAMOS DE TERCEROS: ..... DECIMACUARTA: EXTINCION: El presente fideicomiso cesará de surtir efectos ..... jurídicos, teniéndose por terminado: a) Por la realización del fin para el cual fue constituido; b) Por hacerse imposible su realización; c) Por renuncia o remoción del fiduciario si no fuese posible sustituirlo; d) Por el transcurso del plazo para el cual fue constituído y e) por

sentencia judicial. DECIMAQUINTA: LIQUIDACION: Al vencimiento del plazo del fideicomiso, o antes, si aconteciera cualquiera de las causales establecidas en la cláusula anterior, se procederá a la liquidación del fideicomiso, cubriéndose en primer lugar los gastos y honorarios del fideicomiso si hubieren y posteriormente se procederá a la entrega de los bienes fideicometidos al Fideicomitente o su designado. DECIMASEXTA: REGIMEN NORMATIVO Y LUGAR PARA RECIBIR NOTIFICACIONES ..... DECIMASEPTIMA: Manifiestan los otorgantes en las personerías .....

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CONSIDERACIONES PARA CLAUSULAS ADICIONALES Y/O PUNTOS A INCLUIR EN CLAUSULAS YA ESTABLECIDAS

1. Provisión para el caso de que el Fiduciario quisiera retirarse del contrato.

2. Provisión para el caso de disputas entre las Partes, e.g., Arbitraje.

3. Especificaciones en cuanto al manejo del patrimonio fideicometido e.g., tipos de inversión, niveles mínimos de liquides, etc.

4. Provisión para el caso de gastos u otras erogaciones imprevistos.

5. Para efectos de remoción del Fiduciario, aclarar que tiene que ser por los motivos detallados en el código de comercio en el capitulo sobre fideicomisos.

# INDEPENDENT GUATEMALAN LEGAL COUNSEL
# FINANCIAL MARKETS DEVELOPMENT PROGRAM
# PRIVATE ENTERPRISE DEVELOPMENT PROJECT PED-520-0341

## SCOPE OF WORK

Aimed at assisting in the perfection of legal documentation to establish a Credit Guaranty Trust Fund, the consultant(s) will:

I. Assist in the completion of a Trust Agreement

Based upon drafts to be provided from the Private Sector Office, the consultant(s) shall be expected to recommend such changes as may be necessary to ensure that the final version of the Agreement, at least:

- Describes the background and purpose of establishing the Credit Guaranty Trust Fund
- Establishes the funding of the Trust Fund
- Identifies and sets out the obligations and rights of the parties to the Trust Agreement
- Reflects and sets out such operational procedures as may be necessary for the proper functioning of the Trust Fund
- Reflects or otherwise incorporates the terms and conditions of the Project Agreement that will govern the issue and payment of guaranties under the Credit Guaranty Trust Fund
- Provides for the event that the Settlor (Fideicomitente) shall wish to remove a Trustee (Fiduciario)
- Provides terms for the eventual liquidation of the Trust Fund
- Is structured so as to minimize the costs of executing the Agreement while providing maximum flexibility to include Trustees (Fiduciarios)
- Is in full accordance with Guatemala Law including the pertinent articles on Trust Funds contained in Guatemala's Code of Commerce
- Contains such additional provisions as the consultant(s) and AID may agree are necessary and sufficient for the Trust Agreement to effectively contribute to the success of the Credit Guaranty Trust Fund project

II. Assist in the completion of a Project Agreement

The consultant(s) shall be expected to review Credit Guaranty Fund Project Agreement drafts provided by the Private Sector Office to ensure the Project Agreement final version, at least:

- Is adequately reflected or otherwise incorporated into the Trust Agreement and vice-versa

- Is structured so as to minimize the costs of executing the Project Agreement while providing maximum flexibility to include participating financial institution

- Contains such additional provisions as the consultant(s) and AID may agree are necessary and sufficient for the Project Agreement to effectively contribute to the success of the Credit Guaranty Trust Fund project

III. Issue legal opinions concerning both the Trust Agreement and the Project Agreement. These opinions shall, at least:

- Indicate that the Agreement are fully in accordance with all pertinent Guatemalan Law

- Indicate that the Agreement adequately represents the purposes for which they were drawn up, as for the present scope of work and such additional communications of these purposes as may be provided in writing by AID

- Include such oter statements as the consultant(s) may deem pertinent

Draft: SLack _____
Clearance: G.Matta _____

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APPENDIX E

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

# *Memorandum*

TO : Felipe Manteiga

DATE: June 13, 1988

FROM : Stephen J. Lack, Consultant

SUBJECT: START-UP SCHEDULES FOR THE PED CREDIT GUARANTY FACILITIES

Following are the start-up schedules for the PRE-940 and PED-341 credit guaranty facilities, including dates and actions:

PRE-940 CREDIT GUARANTY LINE

1. June 17 — Signing of the Project Agreement between A.I.D., CAEM, and Banco Granai & Townson, S. A. (G&T)

2. June 20/ July 30
   a.) G & T satisfies conditions precedent; requests and obtains first Standby Letter of Credit (L/C); uses facility to partially guarantee at least two loans to medium or small enterprises.
   b.) Completion of talks and documentation necessary to delegate facility Administrator role from CAEM to Camara de Finanzas.
   c.) Incorporation of at least one more financial institution into the Project Agreement.

3. Aug. 1/ Dec. 31 — Facility promotion campaigns launched. Gradual increase in facility utilization to reach at least US$250,000 by year's end.

*Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan*

PED-341 CREDIT GUARANTY FUND

1. July 20 Completion of documentation and legal opinions covering local Trust Fund and Project Agreement.

2. July 30 Completion of arrangements and documentation for CAEM delegation of Administrator role to Camara de Finanzas for this facility as well.

3. Aug. 1/ Aug. 30
   a.) Final selection (most likely through a bidding process) of fiduciary agent(s) to manage this Fund's monies in Trust.
   b.) Facility promotion campaigns launched.
   c.) A.I.D. transfers Trust Fund monies to fiduciary agent(s).

4. Sept. 1/ Dec. 31
   a.) By September 15 at least two financial institutions sign Project Agreement with A.I.D. and Camara de Finanzas.
   b.) By October 15 financial institutions satisfy conditions precedent.
   c.) By year's end these, together with at least two more financial institutions, have obtained from the Fund at least the equivalent of US$250,000 in guaranties.

'dar(3037c)

## Additional Facility Management Issues

After the credit quaranty facilities are in operation, USAID/Guatemala may wish to consider the following measures to improve financial institution participation and to otherwise strengthen the facilities and ensure utilization for the intended beneficiaries.

### Incentives and Compliance

Financial institutions should be advised that guarantees of more than 50% of loans to SME will be approved if the genuine socio-economic impact of loans is very substantial and if the previous participation record of the financial institution is deemed satisfactory by A.I.D.

In special cases, interest on SME loans should also be partially or fully guaranteed.

In special cases, claims should be payable before the 180 day minimum.

Maximum loan size should be waived in cases where the beneficiary and/or socio-economic impact are of special interest to A.I.D.

Some portion of financial institution administrative costs should by covered by the LC/CGF.

As a "reward" for effective participation by banks, trust fund monies should be invested in such bank's paper.

Financial institutions should perhaps be required to certify that they would not have made the SME loans without the guaranty from LC/CGF.

The Administrator, as warranted, should be authorized to pay out only part of a guarantee, pending an audit to verify, prior to payment, the unrecoverable guarantee balance.

### Other Measures

Guarantee levels, by percentage, should eventually be increased for smaller loans, say those of less than the equivalent of US$ 25,000, provided that the financial institution certifies

that the borrower is unable to adequately collateralize the loan himself.

Guarantee percentages should also eventually be adjusted and/or mixed to reflect true working capital/short term needs versus fixed asset/long term financial needs of SMEs.

At some point the personal guarantee of the beneficiary should be required by the LC/CGF as a condition for providing its guarantee to the financial institution.

Facility administrators should explore with insurance companies the possibility and cost of obtaining reinsurance for the guarantees issued by them to SMEs.

SMEs and financial institutions should be able to immediately submit a guarantee claim in the event of a natural disaster or other force majeure.

Financial institutions should be asked to provide quarterly reports on guarantee applications or potential SME applicants that were rejected and the reasons for rejections. This may help to refocus different aspects of the facilities.

Facility administrators and A.I.D. should develop a leverage (multiplier) strategy to determine and adjust periodically the amount of funded guarantee necessary to cover each loan unit.

**Appendix G**

## Readings

Following is a list of books and documents that provide information related to credit guarantee facilities.


Small Scale Enterprise Credit Guaranty Facilities Interim Report III on the Experiences of Other Guaranty Schemes Worldwide, Prepared by Agricultural Development International (ACDI), Middle East Regional Office, January, 1988. Prepared for USAID/Egypt.

Costa Rica, INCA Private Sector Development Study, submitted to the Office of Private Sector Development, A.I.D., Alajuel, Costa Rica, March 30, 1988.

Blanchard, J., "Capital Access Program Guidelines", Michigan Strategic Fund, April, 1985.

Levitsky, J. and Prosod, R., "Credit Guaranty Schemes for Small and Medium Enterprises", World Bank Technical Paper Number 58, Industry and Finance Series. Washington, DC, February, 1987.

"Business Revolving Fund Guidelines". National Development Council, New York, NY, 1987.