offender, the court can apportion liability for payment of the full amount of restitution. When the court finds that more than one victim has sustained a loss requiring restitution, the court must provide full restitution for each victim, but may provide different payment schedules to the victims. A victim or the offender may petition the court for modification of the restitution order in light of a change in the economic circumstances of the victim. Although the sections are termed "mandatory restitution," the statutes provide for the court to order less than the full amount or no restitution at all if the court finds "the economic circumstances of the defendant are not sufficient to satisfy the order in the foreseeable future. These new mandatory restitution provisions have broader definitions of loss than 18 U.S.C. § 3663, and apply "notwithstanding section 3663, and in addition to any civil or criminal penalty authorized by law." Congress has also added similar mandatory restitution provisions for offenses involving telemarketing fraud (18 U.S.C. § 2327) and domestic violence (18 U.S.C. § 2264). The proposed amendment alerts the courts to the new statutory requirements and directs application of the statutory provisions if there is a conflict between the statutory provisions and the guidelines.

Proposed Amendment: The Commentary to § 5E1.1 is amended by inserting the following immediately before "Background":

"Application Note:

1. In the case of a conviction under certain statutes, additional requirements regarding restitution apply. See 18 U.S.C. §§ 2248 and 2259 (pertaining to convictions under 18 U.S.C. §§ 2241-2258 in connection with sexual abuse or exploitation of minors); 18 U.S.C. § 2327 (pertaining to convictions under 18 U.S.C. §§ 1028-1029, 1341-1344 in connection with telemarketing fraud); 18 U.S.C. § 2264 (pertaining to convictions under 18 U.S.C. §§ 2261-2262 in connection with domestic violence). To the extent that any of the above-noted statutory provisions conflict with the provisions of this guideline, the applicable statutory provision shall control.".

Chapter Seven (Violations of Probation and Supervised Release)

31(A). Synopsis of Proposed Amendment: Section 110505 of the Violent Crime Control and Law Enforcement Act of 1994, a version of which was proposed by the Commission, amends 18 U.S.C. § 3583(e)(3) by specifying that a defendant whose supervised release

term is revoked may not be required to serve more than five years in prison if the offense that resulted in the term of supervised release is a class A felony. The provision also amends section 3583(g) by eliminating the mandatory re-imprisonment period of at least onethird of the term of supervised release if the defendant possesses a controlled substance or a firearm, or refuses to participate in drug testing. Finally, the provision expressly authorizes the court to order an additional, limited period of supervision following revocation of supervised release and reimprisonment. The courts of appeal were split as to whether a sentencing court had authority to reimpose a term of supervised release upon revocation of the original term of supervised release.

Chapter Seven of the Guidelines Manual contains the policy statements that must be considered by courts when determining the sentence to be imposed upon revocation of probation or supervised release. The policy statements were originally drafted under the assumption that reimposition of supervised release was possible. The proposed amendment eliminates outdated statutory references in those policy statements.

Proposed Amendment: Section 7B1.3(g)(2) is amended by deleting ", to the extent permitted by law,".

The Commentary to § 7B1.3 captioned "Application Notes" is amended in Note 2 by deleting the second sentence and inserting in lieu thereof:

"This statute, as amended by Public Law 103–322, effective September 13, 1994, expressly authorizes the court to order an additional, limited period of supervision following revocation of supervised release and reimprisonment.":

By deleting Note 3 in its entirety; and by renumbering the remaining notes

accordingly.

(B). Synopsis of Proposed Amendment: Section 20414 of the Violent Crime Control and Law Enforcement Act of 1994 makes mandatory a condition of probation requiring that the defendant refrain from any unlawful use of a controlled substance. 18 U.S.C. § 3563(a)(4). The section also establishes a condition that the defendant, with certain exceptions, submit to periodic drug tests. The existing mandatory condition of probation requiring the defendant not to possess a controlled substance remains unchanged. 18 U.S.C. § 3563(a)(3) Similar requirements are made with respect to conditions of supervised release. 18 U.S.C. § 3583(d).

Section 110506 of the Violent Crime Control and Law Enforcement Act of

1994, a version of which was proposed by the Commission, mandates revocation of probation and a term of imprisonment if the defendant unlawfully possesses a controlled substance (in violation of section 3563(a)(3)), possesses a firearm, or refuses to comply with drug testing (in violation of section 3563(a)(4)). It does not require revocation in the case of use of a controlled substance (although use presumptively may establish possession). No minimum term of imprisonment is required other than a sentence that includes a "term of imprisonment" consistent with the sentencing guidelines and revocation policy statements. Similar requirements are made in 18 U.S.C. § 3583(g) with respect to conditions of supervised release. See discussion of section 110505, supra.

Section 20414 permits "an exception in accordance with United States Sentencing Commission guidelines" from the mandatory revocation provisions of section 3565(b), "when considering any action against a defendant who fails a drug test administered in accordance with [section 3563(a)(4)]." The exception from the mandatory revocation provisions appears limited to a defendant who fails the test and would not cover a defendant who refuses to take the test.

In at least two circuits (the Fourth and Tenth), a defendant who failed a drug test was presumed to have possessed the drugs and consequently was subject to the mandatory revocation provisions. However, in other circuits, failing a drug test was considered no more than evidence of possession and a separate finding of possession was required by the court. The apparent congressional view of the matter is that failure of a drug test may or may not be subject to mandatory revocation, as evidenced by the conditional statement "if the results [of the drug test] are positive [and] the defendant is subject to possible imprisonment." 18 U.S.C. § 3563(a)(4). It is not clear whether the Fourth and Tenth Circuits will consider their view of the issue superseded by this

The proposed amendment adds commentary that expressly reflects the statutory exception from mandatory revocation if the offender fails a drug test and amends the Commentary to Chapter Seven to eliminate outdated statutory references.

Proposed Amendment: The Commentary to § 7B1.4 captioned "Application Notes" is amended by deleting Notes 5 and 6 in their entirety