

(1) return of property; (2) replacement of property; or (3) if the victim agrees, services rendered to the victim or to a person or organization other than the victim. *See* 18 U.S.C. § 3664(f)(4).

(f) A restitution order may direct the defendant to make nominal periodic payments if the court finds from facts on the record that the economic circumstances of the defendant do not allow the payment of any amount of a restitution order and do not allow for the payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments.

(g) Special Instruction

(1) This guideline applies only to a defendant convicted of an offense committed on or after November 1, 1997. Notwithstanding the provisions of §1B1.11 (Use of Guidelines Manual in Effect on Date of Sentencing), use the former §5E1.1 (set forth in Appendix C, amendment 571) in lieu of this guideline in any other case.

### Commentary

#### Application Note:

1. The court shall not order community restitution under subsection (d) if it appears likely that such an award would interfere with a forfeiture under chapter 46 or 96 of title 18, United States Code, or under the Controlled Substances Act (21 U.S.C. § 801 *et seq.*). *See* 18 U.S.C. § 3663(c)(4).

Furthermore, a penalty assessment under 18 U.S.C. § 3013 or a fine under subchapter C of chapter 227 of title 18, United States Code, shall take precedence over an order of community restitution under subsection (d). *See* 18 U.S.C. § 3663(c)(5).

**Background:** Section 3553(a)(7) of title 18, United States Code, requires the court, “in determining the particular sentence to be imposed,” to consider “the need to provide restitution to any victims of the offense.” Orders of restitution are authorized under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327, 3663, and 3663A, and 21 U.S.C. § 853(q). For offenses for which an order of restitution is not authorized, restitution may be imposed as a condition of probation or supervised release.

Subsection (d) implements the instruction to the Commission in section 205 of the Antiterrorism and Effective Death Penalty Act of 1996. This provision directs the Commission to develop guidelines for community restitution in connection with certain drug offenses where there is no identifiable victim but the offense causes “public harm.”

To the extent that any of the above-noted statutory provisions conflict with the provisions of this guideline, the applicable statutory provision shall control.

<i>Historical Note</i>	Effective November 1, 1987. Amended effective January 15, 1988 (amendment 53); November 1, 1989 (amendments 278, 279, and 302); November 1, 1991 (amendment 383); November 1, 1993 (amendment 501); November 1, 1995 (amendment 530); November 1, 1997 (amendment 571); May 1, 2001 (amendment 612); November 1, 2001 (amendment 627); November 1, 2023 (amendment 824).
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