

NATIONAL GOVERNMENT ETHICS

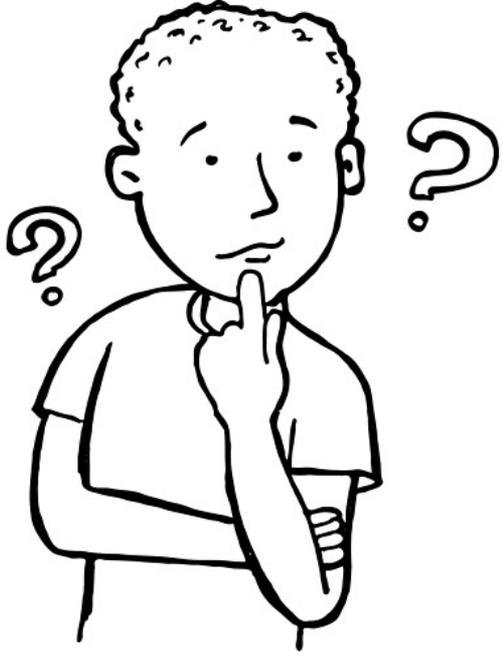
# SUMMIT

MARCH 8-10 2016

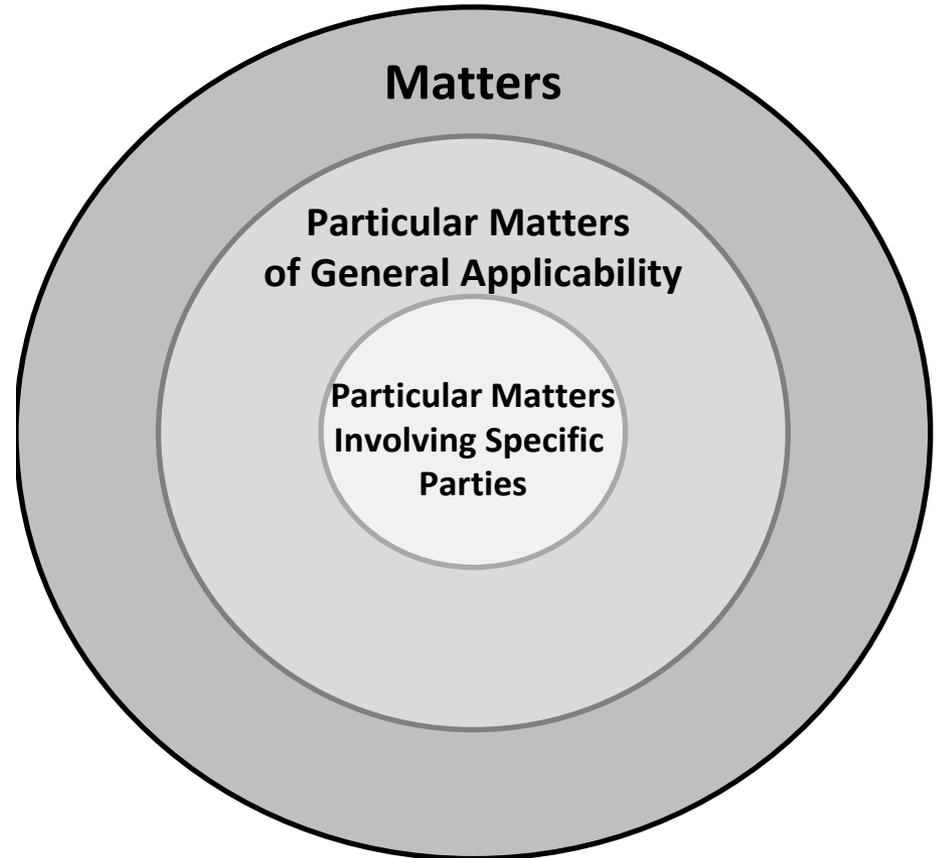
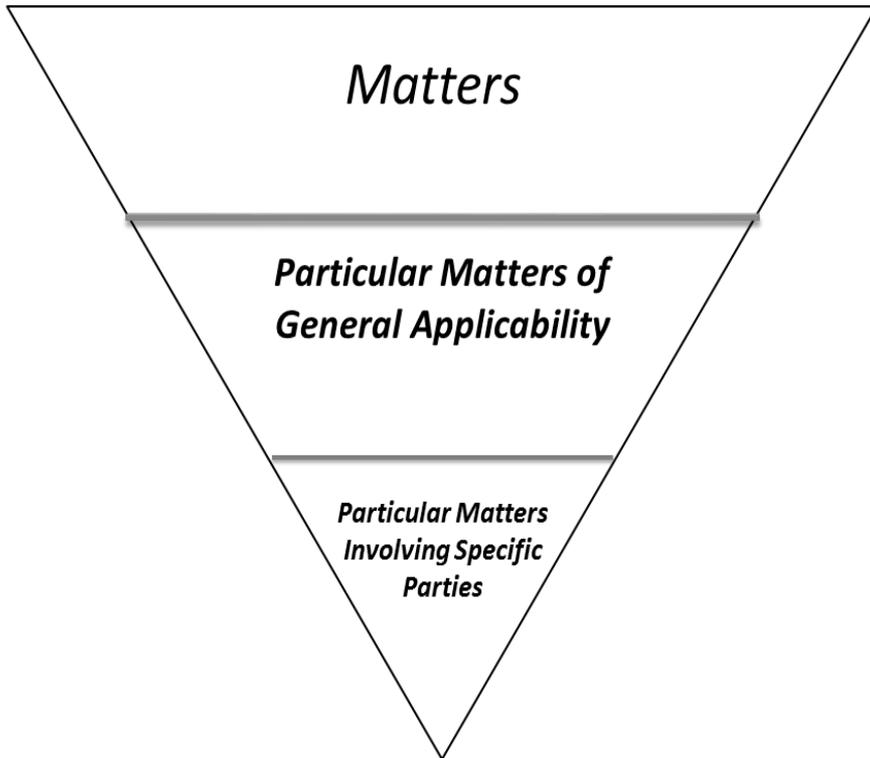
## **IDENTIFYING CONFLICTS: PARTICULAR MATTERS OF GENERAL APPLICABILITY**

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# PARTICULAR MATTERS OF GENERAL APPLICABILITY

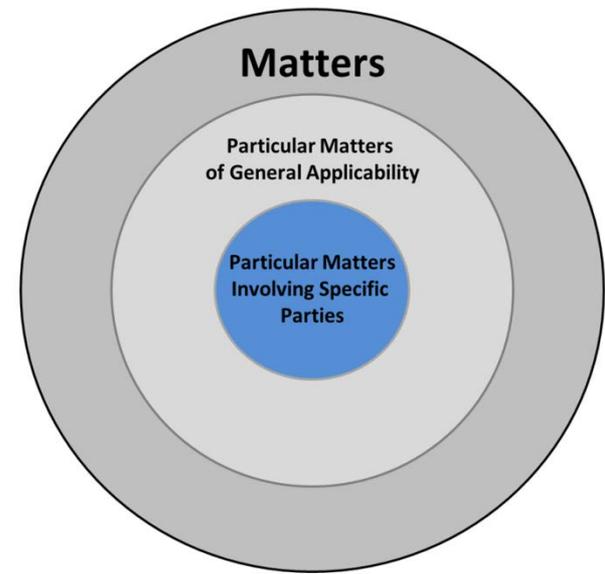


# TYPES OF “MATTERS”



# DEFINITIONS

- Matters – Very broad; focus on a large and diverse group
- Particular Matters
  - Particular Matters of General Applicability - Narrower matters that are focused on a discrete and identifiable class
  - Particular Matters Involving Specific Parties - A very limited group of identified parties is involved in the matter



# LAWS IN WHICH IDENTIFYING TYPE OF MATTER IS IMPORTANT

- 18 U.S.C. § 203
- 18 U.S.C. § 205
- 18 U.S.C. § 207
- 18 U.S.C. § 208
- 5 C.F.R. § 2635.502



# PARTICULAR MATTERS OF GENERAL APPLICABILITY

- Discrete and identifiable class
  - Shared characteristics or traits, distinguishable from the general population
- The matter is focused



# ANALYZING THE CLASS

- How do you decide when a class is so large that it is no longer discrete and identifiable?
- When is the class “just right” such that the matter is a particular matter?

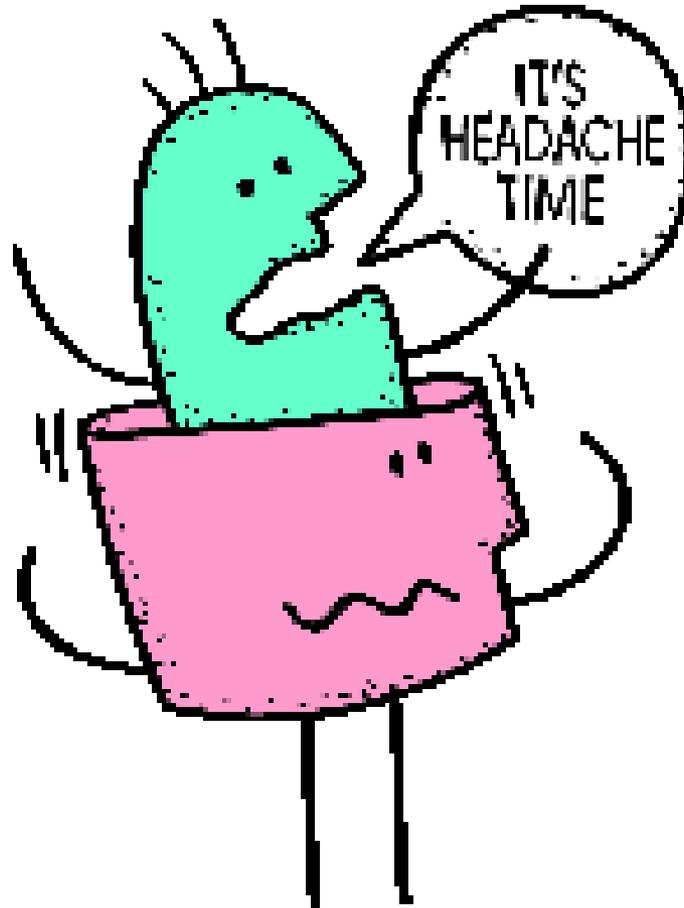


# ROADMAP FOR ANALYSIS

- How broad or narrow is the focus of the matter? Is the matter directed to a group of individuals or entities?
- Is the class that the matter focuses on discrete and identifiable from the general population?
- Does the matter have a distinct impact on a class that is separate from the impact of the matter on the general population?



# ASPIRIN EXAMPLE

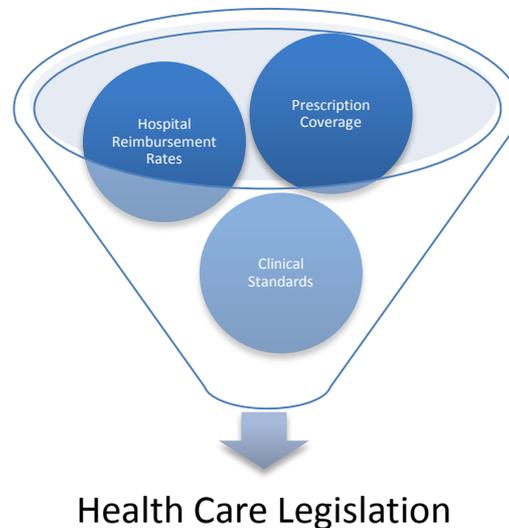




# ASPIRIN EXAMPLE



- Don't conflate the "particular matter" and "direct and predictable" analyses
- Breaking up matters is generally not required

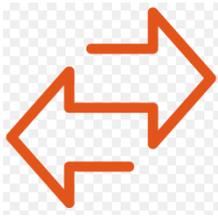


# PARTICULAR MATTERS OUTSIDE 208

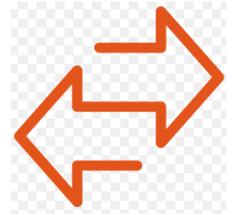
- OLC opinion on 18 U.S.C. § 205



- AUSAs were a discrete and identifiable class by “virtue of their employing agency, their profession and their position”



# TRANSITIONS



- The characterization of an activity as a “particular matter of general applicability” may change over time
- Boundaries can be fluid and there are no bright lines

Into the  
Particular Matter  
Involving Specific  
Parties bowl I  
go!



# REAL WORLD EXAMPLES

Identifying “Particular Matters of General Applicability” and distinguishing them from other matters can be difficult



# EDUCATING EMPLOYEES ON PARTICULAR MATTERS OF GENERAL APPLICABILITY

- Use “Plain English”
- Avoid jargon
- Give examples
- Simplify as appropriate





THANK YOU