The SEC Request for Information (RFI) provides guidance through assumptions regarding the uniform fiduciary standard and the duty of loyalty. As noted, the RFI states these assumptions may not represent the views of the SEC. But they may, so they are important. The RFI provides a picture of fiduciary duties that are far less stringent than the fiduciary duties required by the Investment Advisers Act of 1940 Act. In summary, commenters should point out how these assumptions are bad for investors include these points:

1. Do not restrict what communications are fiduciary advice. The assumptions narrowly define written or oral communications and circumstances that are clearly deemed “fiduciary advice,” and suggest a ‘facts and circumstances’ exploration will be necessary to determine whether much written or verbal communications constitute fiduciary advice. This restricts what statements must meet the fiduciary standard.
2. Do not allow fiduciary duties be waived. The assumptions explicitly allows fiduciary duties to be waived through contract provisions, marketing materials or disclosure. This could allow a broker to waive most advice as ‘non fiduciary.’

(These first two points together could make the fiduciary standard to be a “sometimes” or “occasional” fiduciary standard.

1. Do not promote disclosure as the best way to address conflicts; promote avoiding conflicts. Stressing disclosing conflicts, as the current assumptions do, and not avoiding conflicts suggests disclosure is the best way to address conflicts. This is wrong and bad for investors.
2. For unavoidable material conflicts, require client’s providing informed consent for each transaction. The current assumptions allow more casual disclosure and oral disclosure (disclosure that is more “efficient” for the firm to deliver) while, not requiring either “client consent” or “informed client consent” of material conflicts of interest (disclosure which are more effective for the client).
3. Stress the harms of *conflicts*. The current assumptions minimize the stigmas associated with conflicts. They rebrand them. They question whether principal trading is, in fact, always a conflict. They omit any mention that harms are associated with conflicts. They omit any mention of associated benefits or appropriateness of avoiding conflicts. They omit urging broker dealers and investment advisers to avoid conflicts. By these omissions, conflicts are implied to be less harmful or OK. This is backwards.
4. Stress what “*loyalty”* means. By minimizing the harm of conflicts, the assumptions effectively redefine *loyalty*. In its essence, the ‘duty of loyalty’ today means “do the right thing.” In these assumptions it means “disclose doing the wrong thing.” This is wrong and bad for investors.