



**Annuity Investors Life**

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**Broker/Dealer:** \_\_\_\_\_

## **DEPARTMENT OF LABOR FIDUCIARY RULE AMENDMENT TO SELLING AGREEMENT**

This Department of Labor Fiduciary Rule Amendment (“Amendment”) amends the selling agreement as it may have been previously amended (the “Selling Agreement”) by and among **Annuity Investors Life Insurance Company** (“AILIC”), **Great American Advisors, Inc.** (“GAA”), Broker/Dealer identified above and all insurance agency affiliates or subsidiaries (Broker/Dealer together with insurance agency affiliates or subsidiaries, the “Producers”) (AILIC, GAA, and the Producers collectively, the “Parties”). Unless written objection is received from Broker/Dealer within 15 days after notification of this Amendment is mailed, this Amendment is effective as of the Applicability Date, as defined below.

### **RECITALS**

**WHEREAS**, the Parties have entered into a Selling Agreement for the sale and distribution of certain variable and fixed annuity contracts issued by AILIC (“Covered Annuities”) through duly licensed and/or registered natural persons associated with the Producers (“representatives”);

**WHEREAS**, the Producers and their representatives may sell Covered Annuities or provide advice to employer-sponsored plans and individual participant accounts thereunder subject to the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), and as individual retirement annuities and to individual retirement accounts and other plans subject to section 4975 of the Internal Revenue Code (“IRC”) (collectively, the “Covered Retirement Plans”);

**WHEREAS**, on April 6, 2016, the United States Department of Labor (the “DOL”) issued final rules, at 29 CFR section 2510.3-21, expanding the definition of an “investment advice fiduciary” under ERISA and section 4975 of the IRC, and adding, revoking, and amending certain prohibited transaction exemptions (“PTEs”) (together, with any future revisions, the “DOL Fiduciary Rule”), initially scheduled to be applicable as of April 10, 2017 (this date, or any extension thereof applicable to an expanded definition of an “investment advice fiduciary,” the “Applicability Date”);

**WHEREAS**, once the expanded definition of an “investment advice fiduciary” is applicable, the receipt of compensation by the Producers or their representatives or any related person, the sale of a Covered Annuity to or as a Covered Retirement Plan and advice given in connection with a Covered Retirement Plan or a distribution, transfer, or rollover from a Covered Retirement Plan may be a prohibited transaction under sections 406(a) or (b) of ERISA or section 4975(c) of the IRC unless the transaction or advice occurs in compliance with an applicable PTE;

**WHEREAS**, to utilize the Best Interest Contract PTE, as issued on April 6, 2016, a “financial institution” must take responsibility for the sale of a Covered Annuity to or as a Covered Retirement Plan and advice given in connection with a Covered Retirement Plan or a distribution, transfer, or

rollover from a Covered Retirement Plan, and a revised or future PTE may also require a “financial institution” to take responsibility for that type of sale or advice;

**WHEREAS**, the Broker/Dealer identified above qualifies as a “financial institution” under the Best Interest Contract PTE, as issued on April 6, 2016, and is expected to continue to qualify as a “financial institution” under a revised or future PTE;

**WHEREAS**, the Producers wish to facilitate the sales of Covered Annuities by their registered representatives and the Broker/Dealer has agreed to serve as the “financial institution” for such sales and advice provided by the Producers and their representatives as required under the Best Interest Contract PTE, or under a revised or future PTE;

**WHEREAS**, the Selling Agreement gives the AILIC and GAA the right to amend the Selling Agreement upon 30 days written notice to the Broker/Dealer, and Broker/Dealer is deemed to have accepted the amendment if no written objection is received by AILIC and GAA within 15 days after notification is mailed; and

**WHEREAS**, the Parties wish to enter into this Amendment to address the Parties’ respective obligations and responsibilities with respect to the DOL Fiduciary Rule.

**NOW, THEREFORE**, unless written objection is received by AILIC and GAA from Broker/Dealer within 15 days notification of this Amendment is mailed, the Selling Agreement is amended to add the following new provisions:

- 1. Responsibility for Fiduciary Compliance.** To the extent the Producers or their representatives act as an “investment advice fiduciary,” as defined pursuant to the DOL Fiduciary Rule, with respect to any Covered Retirement Plan in connection with the purchase, holding, or disposition of a Covered Annuity, Producers and their representatives shall be responsible for complying with all conditions of an applicable PTE that covers the transaction or advice. In addition, to the extent that the Producers or their representatives acts as an “investment advice fiduciary,” as defined pursuant to the DOL Fiduciary Rule, with respect to any Covered Retirement Plan in connection with the purchase, holding, or disposition of a Covered Annuity, the Producers and their representatives shall be responsible for complying with all conditions of an applicable PTE that requires a “financial institution” to take responsibility for that type of sale or advice if that is the only available PTE, or if it enters a contract intended to comply with that PTE, or if the Producers’ policy requires the use of that PTE.
- 2. Covered Annuities Issued Prior to Applicability Date.** With respect to any Covered Annuity acquired or held by or as a Covered Retirement Plan prior to the Applicability Date, the Producers understand that additional purchase payments made to the Covered Annuity and advice provided with respect to the Covered Annuity may be subject to the DOL Fiduciary Rule. If subject to the DOL Fiduciary Rule, the Producers shall be responsible for complying with all conditions of an applicable PTE under Paragraph 1 above. It is understood and

agreed that, unless the Producers instruct AILIC and GAA otherwise in writing, AILIC and GAA will pay a commission on any purchase payment made after the Applicability Date to a Covered Contract issued before the Applicability Date, and will continue to pay any applicable trail commission after the Applicability Date on a Covered Annuity issued before the Applicability Date.

3. **Investment Advice Provided Post-Applicability Date.** The Producers acknowledge and agree that AILIC and GAA shall not be required to, nor shall they, provide any investment advice, as defined under the DOL Fiduciary Rule, on or after the Applicability Date with respect to any Covered Annuity acquired or held by or as a Covered Retirement Plan for which the Producers are the firm-of-record or a fiduciary under the DOL Fiduciary Rule. The Producers further acknowledge and agree that AILIC and GAA shall not be required, nor shall they have any responsibility, to determine if a transaction effected under a Covered Annuity on or after the Applicability Date was recommended by the Producers or their representatives or to otherwise provide any data or information regarding any Covered Annuities or any transactions therein.
4. **Supervision.** The Parties acknowledge and agree that AILIC and GAA do not have any supervisory authority over, or any supervisory responsibility for, the Producers or their representatives relating to their provision of investment advice, as defined in the DOL Fiduciary Rule, with respect to any Covered Annuity that is acquired or held by or as a Covered Retirement Plan, or compliance with applicable PTEs, notwithstanding AILIC's maintenance of a suitability supervision system for purposes of complying with laws, rules, and regulations adopted by states and their state insurance regulatory authorities relating to the suitability of recommendations of annuity and insurance transactions.
5. **Compliance with Other Applicable Laws.** The Parties acknowledge and agree that Producers' compliance with the DOL Fiduciary Rule does not obviate the requirement to comply with any other applicable law, rule, or regulation.
6. **Representations and Warranties of the Producers.**
  - a. The Producers represent and warrant that the Broker/Dealer is and shall remain a Broker/Dealer registered under the Securities Exchange Act of 1934; and
  - b. With respect to any investment advice related to a Covered Annuity for which it is responsible under Paragraph 1 above, the Producers represent and warrant that they are:
    - i. independent of AILIC and GAA;
    - ii. capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies; and

- iii. after the Applicability Date, a fiduciary under ERISA or the IRC, or both, with respect to, and are responsible for exercising independent judgment in evaluating, any transactions involving a Covered Annuity.
  - c. The Producers acknowledge that AILIC and GAA have a financial interest in the Covered Annuities and transactions therein and are not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with a Covered Annuity for which the Producers are the firm-of-record.
  - d. The Producers acknowledge that AILIC and GAA do not receive a fee or other compensation directly from a plan, plan fiduciary, plan participant, beneficiary, or IRA owner (as such terms are defined in 29 CFR section 2510.3-21) for the provision of investment advice in connection with a Covered Annuity for which the Producers are the firm-of-record.
  - e. These representations and warranties shall continue for as long as this Amendment is in effect.
7. **Representation and Warranty of AILIC and GAA.** AILIC and GAA will perform their duties as set forth in the Selling Agreement with respect to the issuance of Covered Annuities to Covered Retirement Plans for as long as this Amendment remains in effect.
8. **Marketing Materials.** The Producers acknowledge and agree that any marketing materials provided by AILIC and GAA are not intended or designed to satisfy any disclosure provisions that may apply to the Producers or their representatives under the DOL Fiduciary Rule, or any disclosure conditions of any PTE.
9. **Indemnification.** The Producers shall hold harmless, defend, and indemnify the AILIC, GAA, and their respective directors, officers, and employees against any and all liability, claim, loss, or cause of action (including regulatory and administrative proceedings), including costs and reasonable attorney fees, resulting from or arising out of the application of the DOL Fiduciary Rule to a Covered Annuity for which the Producers were the firm-of-record at the time that a violation of the DOL Fiduciary Rule is alleged to have occurred.

*[The remainder of this page left blank intentionally. Signature page to follow.]*

In all cases of conflict with other terms of the Selling Agreement, the provisions of this Amendment shall control. All other terms and conditions of the Selling Agreement shall remain unchanged.

**ANNUITY INVESTORS LIFE  
INSURANCE COMPANY**

**GREAT AMERICAN ADVISORS, INC.**



By: \_\_\_\_\_

Name: John P. Gruber

Title: Senior Vice President

Date: 3/6/17



By: \_\_\_\_\_

Name: Mark F. Muething

Title: Vice President

Date: 3/6/17