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## **DEPARTMENT OF LABOR FIDUCIARY RULE AMENDMENT TO AGENCY AGREEMENT WITH POWER TO APPOINT**

This Department of Labor Fiduciary Rule Amendment (“Amendment”) amends the Agency Agreement with Power to Appoint as it may have been previously amended (the “Agency Agreement”) by and between Great American Life Insurance Company (the “Company”) and Agency (collectively, the “Parties”). Unless written objection is received from Agency within 15 days after notification of this Amendment is mailed, this Amendment is effective as of the Applicability Date, as defined below, but no earlier than 30 days after notification of this Amendment is mailed unless the Agency consents in writing.

### **RECITALS**

**WHEREAS**, the Parties have entered into an Agency Agreement for the sale and distribution of certain fixed annuity contracts issued by the Company (“Covered Annuities”) through duly licensed and/or registered natural persons associated with the Agency (“subordinate agents”);

**WHEREAS**, the Agency and its subordinate agents 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 Agency or its subordinate agents 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 Agency and its subordinate agents can only utilize a revised or future PTE that may also require a “financial institution” to take responsibility for that type of sale or advice if an entity that qualifies to serve as the “financial institution” has in fact agreed to serve in that capacity for such sales and advice provided by the Agency and its subordinate agents as required under the Best Interest Contract PTE, or under a revised or future PTE;

**WHEREAS**, the Agency Agreement gives the Company the right to amend the Agency Agreement upon 30 days written notice to the Agency, and Agency is deemed to have accepted the amendment if no written objection is received by the Company 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 the Company from the Agency within 15 days notification of when this Amendment is mailed, the Agency Agreement is amended to add the following new provisions:

- 1. Responsibility for Fiduciary Compliance.** To the extent the Agency or its subordinate agents 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, Agency and its subordinate agents 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 Agency or its subordinate agents 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 Agency and its subordinate agents 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 the “financial institution” enters a contract intended to comply with that PTE, or if the “financial institution’s” 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 Agency understands 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 Agency shall be responsible for complying with all conditions of an applicable PTE under Paragraph 1 above. It is understood and agreed that, unless the Agency instructs the Company otherwise in writing, the Company 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 Agency acknowledges and agrees that the Company shall not be required to, nor shall it, 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 Agency is the firm-of-record or a fiduciary under the DOL Fiduciary Rule. The Agency further acknowledges and agrees that the Company shall not be required, nor shall it have any responsibility, to determine if a transaction effected under a Covered Annuity on or after the Applicability Date was recommended by the Agency or its subordinate agents or to otherwise provide any data or information regarding any Covered Annuities or any transactions therein.
4. **Supervision.** The Parties acknowledge and agree that the Company does not have any supervisory authority over, or any supervisory responsibility for, the Agency or its subordinate agents relating to its 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 the Company'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 Agency's 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 Agency.**
  - a. With respect to any investment advice related to a Covered Annuity for which it is responsible under Paragraph 1 above, the Agency represents and warrants that it is:
    - i. independent of the Company;
    - 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.
  - b. The Agency acknowledges that the Company has a financial interest in the Covered Annuities and transactions therein and is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with a Covered Annuity for which the Agency is the firm-of-record.

- c. The Agency acknowledges that the Company does 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 Agency is the firm-of-record.
  - d. These representations and warranties shall continue for as long as this Amendment is in effect.
7. **Representation and Warranty of the Company.** The Company will perform its duties as set forth in the Agency 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 Agency acknowledges and agrees that any marketing materials provided by the Company are not intended or designed to satisfy any disclosure provisions that may apply to the Agency or its subordinate agents under the DOL Fiduciary Rule, or any disclosure conditions of any PTE.
9. **Indemnification.** The Agency shall hold harmless, defend, and indemnify the Company and its 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 Agency was the firm-of-record at the time that a violation of the DOL Fiduciary Rule is alleged to have occurred.

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

**GREAT AMERICAN LIFE INSURANCE COMPANY**



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

Name: Mark F. Muething

Title: Executive Vice President

Date: 3/9/17