BOARD ACTION MEMORANDUM

TO: NCUA Board   **DATE:** September 13, 2018

FROM: Office of General Counsel   **SUBJ:** Part 747 – Appointment of Administrative Law Judges

ACTION REQUESTED: Board briefing on adoption of a resolution (Resolution) to appoint Administrative Law Judges (ALJs).

DATE ACTION REQUESTED: September 20, 2018.

OTHER OFFICES CONSULTED: None.

VIEWS OF OTHER OFFICES CONSULTED: N/A.

SUBMITTED TO INSPECTOR GENERAL FOR REVIEW: N/A.

RESPONSIBLE STAFF MEMBERS: Pamela Yu, Special Counsel to the General Counsel.

SUMMARY: In accordance with the NCUA's regulations, 12 C.F.R. pt. 747, subpt. A., the Office of General Counsel files a Notice of Charges, Notice of Assessment of Civil Money Penalty, and Notice of Hearing (Notice) with the Office of Financial Institution Adjudication (OFIA) to commence an administrative proceeding and to seek the assignment of an ALJ to preside over the matter in accordance with the cited regulations. OFIA is the office that houses ALJs and associated staff for administrative proceedings conducted by the NCUA, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Board of Governors of the Federal Reserve (FRB).

In light of the Supreme Court's recent opinion in *Lucia et al. v. Securities & Exchange Comm'n*, 585 U.S. ___ (June 21, 2018), which held that the SEC's ALJs must be appointed by the head of the agency to comply with the Appointments Clause of the Constitution, the Board recently adopted, by notation vote, a Resolution to approve the NCUA's appointment of OFIA's two ALJs. The ALJs did not become NCUA employees or officers through this action, as the FDIC has already appointed both ALJs as FDIC officers and employs them for personnel purposes.

This action was executed by notation vote because of its time-sensitive and largely procedural nature. Approving the Resolution by notation vote enabled pending proceedings to move forward without interruption or delay.

RECOMMENDED ACTION: N/A.

ATTACHMENT: None.