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## GENERAL MEMORANDUM 13-004

### GAO Report Raises Questions about ANCSA Regional Corporations

The Government Accountability Office (GAO) has issued a new report on corporate governance practices of Alaska Native regional corporations. While the report does not recommend any specific actions by Congress, it does raise questions about the corporations' exemption from some federal reporting requirements, the role of the federal government in maintaining the solvency of the corporations, and who should be shareholders.

The GAO report, *Regional Alaska Native Corporations: Status 40 Years after Establishment, and Future Considerations* (December 2012), was undertaken at the request of Representative Edward Markey (D-MA), the Ranking Member on the House Natural Resources Committee (which has a Subcommittee on Indian and Alaska Native Affairs).<sup>1</sup> The report may be accessed at: <http://www.gao.gov/products/GAO-13-121>

The GAO is a nonpartisan agency that works for Congress as a government watchdog monitoring federal expenditure of taxpayer dollars. The report focuses on the 13 regional corporations formed under the Alaska Native Claims Settlement Act (ANCSA), one for each of 12 geographic regions plus a 13<sup>th</sup> for nonresident Alaska Natives. After recounting the history of ANCSA, the report describes the variety of governance practices among the regional corporations. The GAO discusses a range of monetary and other benefits that the corporations provide to shareholders, but also raises three questions for the consideration of lawmakers, corporate officials, and shareholders.

First, the GAO notes that ANCSA generally exempts these corporations from complying with federal securities laws, but requires them to transmit annually a report to their shareholders that contains "substantially all the information" the Securities and Exchange Act requires of annual reports to shareholders. Because the term "substantially all" is vague and not defined in the statute, it is not clear what information must be included in the annual reports, and ANCSA provides no mechanism for federal oversight of corporations' reporting. Thus, GAO raises the question whether the federal reporting requirement should be clarified and overseen.

Second, the report observes that the 12 geographic regional corporations are currently financially sound, but the 13<sup>th</sup> corporation has been insolvent for some time.

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<sup>1</sup> Representative Markey plans to run for the Senate seat now held by Senator John Kerry (D-MA) who is soon expected to be confirmed as the new Secretary of State.

GAO asks what the federal government's role should be, if any, in maintaining the solvency of Alaska Native corporations.<sup>2</sup>

Third, the report raises the question of who should be shareholders in the regional corporations. The GAO recognizes that this issue must be addressed individually by each of the regional corporations and their shareholders. For example, the shareholders of five regional corporations have voted to amend their articles of incorporation to issue shares to Alaska Natives who were born after December 18, 1971, and thus received no shares under the original ANCSA.

The GAO does not make recommendations to Congress on any of the three issues. In the wake of the report, however, Representative Markey has said he plans to introduce legislation that would enhance protections for shareholders by increasing the transparency of ANCSA regional corporations' reporting. In response, Representative Don Young (R-AK) referred to the GAO report as a "useless study" and characterized Representative Markey's proposal as a paternalistic attempt "to save Alaska Natives from themselves."

If you have questions about this memorandum, please contact us as indicated below.

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<sup>2</sup> In years past, the federal government helped several of the other regional corporations avoid insolvency by allowing them to sell their operating losses to profitable companies. The companies would then apply these losses against their profits to lower their taxes. This law was repealed in 1988.