

# United States Senate

WASHINGTON, DC 20510

September 22, 2010

## Via Electronic Transmission

The Honorable Eric H. Holder Jr.  
Attorney General  
United States Department of Justice  
Robert F. Kennedy Building  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Attorney General Holder:

I recently received an extraordinary letter from the retiring Inspector General at the Department of Housing and Urban Development (HUD). I have attached a copy of the letter for your review. As you know, in addition to his service as HUD's Inspector General, Kenneth M. Donohue is also Chair of the Mortgage Fraud Committee of the Justice Department's Financial Fraud Task Force.

In his letter, the Inspector General describes unacceptable circumstances surrounding the mortgage fraud investigation of Beazer Homes USA and its subsidiary, Beazer Mortgage Corporation ("Beazer"). According to the Inspector General, he wrote to you about his concerns with the Beazer investigation on July 6, 2010, but you have yet responded to him. In fact, neither Assistant Attorney General Lanny A. Breuer nor Acting United States Attorney Ed Ryan responded to earlier letters from the Inspector General about this issue. Given the facts he described in his letter to me, I believe it is essential that you reply and address his concerns.

In March 2007, the HUD Office of Inspector General (OIG) began looking into allegations that Beazer engaged in widespread and systematic fraud against the Federal Housing Administration (FHA), resulting in significant losses to the FHA insurance fund. However, according to the Inspector General, the U.S. Attorney's Office for the Western District of North Carolina ("USAO") has hindered the ability of his office to fulfill its statutory functions. Specifically, he alleges among other things:

- 1) The USAO allowed Beazer to choose a law firm, Alston & Bird, to conduct an "internal review" of the same allegations as the OIG, which served to delay and interfere with the OIG investigation.
- 2) USAO officials told OIG agents they were forbidden to conduct interviews or engage in any meaningful investigation of Beazer while Alston & Bird conducted their investigation.

- 3) The USAO attempted, without authority, to prohibit HUD from pursuing civil or administrative remedies against Beazer.
- 4) The USAO showed excessive deference to the, Alston & Bird's "internal review," which cost Beazer \$35 to \$50 million, thus reducing the funds available to compensate individual victims of the mortgage fraud and the FHA insurance fund.
- 5) The USAO failed to consult with HUD and the FHA regarding the deferred prosecution agreement that it entered into with Beazer as a result, the proposed settlement provided too little restitution to HUD compared to the losses it sustained.
- 6) Following the settlement with Beazer, the USAO removed OIG agents from the investigation in retaliation for not supporting the proposed deferred prosecution agreement and for conferring with department officials.

Moreover, the Inspector General notes that the President recently appointed two former partners at Alston & Bird, the law firm that represented Beazer to serve as U.S. Attorneys for the Eastern and Western District of North Carolina. Obviously that raises questions about the working relationship between the OIG and the USAOs in North Carolina on Beazer-related investigations going forward.

Since these are such serious and substantive concerns, I am frankly shocked that you would not address them with the Inspector General immediately. Someone needs to be watching out for the taxpayers and ensuring that those who committed the very types of fraud that led to the financial crisis are held personally responsible. The Justice Department owes Americans a detailed explanation of its actions in this case.

Accordingly, please provide written answers to the following questions:

- 1) According to the deferred prosecution agreement, Beazer agreed to terminate executives and employees "it identified as responsible" for the misconduct.
  - a. How many executives and employees have been terminated?
  - b. What are their names, positions, salaries, and dates of termination?
  - c. How did Beazer identify these employees for termination?
  - d. Why and under what authority was the OIG removed from the investigation preventing these executives and employees from being held accountable and subject to potential criminal prosecution?
  - e. Why was the OIG being prohibited from determining whether other executives and employees may also be culpable in the fraud?

- f. Provide the names of individuals and details of those that have been indicted or prosecuted so far in this investigation.
- 2) As you recall, I recently wrote to you regarding the Justice Department's practice of funneling money from victim compensation funds to advocacy organizations. The deferred prosecution agreement in this case also established a victim compensation fund.
- a. How much has Beazer deposited into the fund to date?
  - b. Are there any plans or arrangements to provide any of the funds to anyone other than victims of Beazer's mortgage fraud?
  - c. How much money has been distributed to how many victims of Beazer's mortgage fraud to date?
  - d. How much compensation has been provided to the FHA to compensate for its losses?
  - e. What is total amount of FHA losses attributable to Beazer's Mortgage fraud?
  - f. Why did the Department agree to a settlement allowing Beazer to limit its liability for losses to the FHA and individual victims of its fraud, when they had sufficient resources to pay \$35 to \$50 million for Alston & Bird to conduct a parallel investigation?

Thank you for your attention and assistance on this matter. I would appreciate your response to my questions by no later than October 6, 2010. Should you have any questions regarding this letter, please do not hesitate to contact Jason Foster at (202) 224-4515. Any formal correspondence should be sent electronically in PDF searchable format to [Brian\\_Downey@finance-rep.senate.gov](mailto:Brian_Downey@finance-rep.senate.gov).

Sincerely,



Charles E. Grassley  
United States Senator

cc: Members of the United States Senate Committee on the Judiciary

The Honorable Shaun L. S. Donovan, Secretary of the United States Department of Housing and Urban Development

Attachment



U.S. DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT  
OFFICE OF INSPECTOR GENERAL  
WASHINGTON, DC 20410-4500

August 10, 2010

Senator Charles E. Grassley  
United States Senate  
Washington, D.C. 20510-1501

Dear Senator Grassley:

This is in response to an inquiry from your Minority Chief Investigative Counsel of the Senate Committee on Finance regarding our investigation into Beazer Homes USA and its subsidiary, Beazer Mortgage Corporation involving allegations of FHA-related fraud. Your Counsel had received independent information regarding this matter and requested that we provide the Committee with details regarding the circumstances surrounding the OIG investigation and the actions of the United States Attorney for the Western District of North Carolina (OUSA). The following describes the initiation and progress, to our knowledge, of the case to date. A timeframe progression is also attached that synthesizes the details you requested.

As you are keenly aware, the Inspector General's (IG) statutory role is unique in that we function not only as a fully constituted law enforcement agency but also have the oversight responsibility for the federal department with which we are associated – in this case, the Department of Housing and Urban Development (HUD) and, thus, by extension, the Federal Housing Administration (FHA) and the Government National Mortgage Association (Ginnie Mae) programs.

The FHA and Ginnie Mae have assumed large market shares in order to bolster and stabilize the floundering mortgage and housing marketplace. In these volatile, almost cataclysmic, times in the mortgage industry, my office has been thrust front and center into the critical role of investigating the rapidly rising tide of mortgage defaults caused by fraud. In doing so, we are partnering with the FHA in efforts to limit losses to its insurance fund as well as to recover, the fullest extent possible, any losses incurred by the fund due to fraudulent loan activity. At a primary level, and in order to fulfill our critical duties, we must work in concert and in partnership with the local Offices of the United States Attorney. Our demonstrated track record in partnering with United States Attorney offices throughout the nation is outstanding as reflected by scores of successful prosecutions of individuals and entities responsible for fraud against our departmental programs. I currently chair the Mortgage Fraud Committee of the Department of Justice's Financial Fraud Task Force.

Unfortunately, and with regret, in response to your inquiry I must relay to you that our ability to fulfill our statutory role with the Office of the United States Attorney for the Western District of North Carolina, under its most recent leadership, is in jeopardy and has become an area of growing concern to me. Our current predicament arose out of our investigation into Beazer Homes USA and its subsidiary, Beazer Mortgage Corporation. In March of 2007, we began looking into allegations that Beazer engaged in mortgage fraud against the FHA program

that, in turn, caused significant losses to the FHA insurance fund. As I mentioned, I have prepared and attached a timeline of the significant dates and events relative to our investigation into Beazer and to the interactions between this office and the OUSA. A closer reading of the timeline highlights, I believe, a number of disconcerting issues.

Central to the disposition of this case was the involvement of the law firm of Alston & Bird, LLP which was chosen by Beazer. With the concurrence of the U.S. Attorney's Office, Alston & Bird conducted an internal review of Beazer regarding the matters then under investigation by the HUD Office of the Inspector General (OIG), essentially to the exclusion of the HUD OIG. In fact, as the timeline indicates, OIG agents were forbidden by the U.S. Attorney's Office for a significant period of time to conduct interviews or to engage in any meaningful investigation of Beazer, and the Department of Housing and Urban Development was prohibited from pursuing any civil or administrative remedies against Beazer.<sup>1</sup> Instead, there was seemingly a reliance on, and deference to, Alston & Bird at a cost to Beazer of an amount, we had been informed, of at least \$35 million and as much as \$50 million. We were critical of this expenditure as it greatly reduced the amount of funds available to repay the Department and the FHA, and thus the American taxpayer, for the fraud committed against them and was incurred while our OIG agents were being instructed to stand down or to limit their investigative activities. The OUSA, after it had agreed to the hiring of Alston & Bird by Beazer, later claimed in negotiations that Beazer was "broke" and could not reimburse the Department of Housing and Urban Development in a significant way.

Moreover, the HUD OIG remained concerned that both the Department and the FHA had not been properly consulted by the OUSA during discussions leading to the proposed resolution of this matter. As the attached timeline shows, on April 24, 2009, we were advised for the first time that the OUSA had reached a proposed final criminal settlement agreement with Beazer without seeking our input. We then brought the fact of the proposed settlement to the Department's and the FHA's attention for two reasons. First, the Department and the FHA were the primary victims of Beazer's fraudulent loan practices. Secondly, after our review of the terms and conditions of the proposed deferred prosecution, we had significant reservations about the terms of the settlement as it sought to waive any civil or administrative rights to recover losses to HUD or FHA with respect to Beazer.

The proposed settlement provided little in the way of restitution to the Department as compared to the large losses it sustained. That recovery, tenuous at best due to the reduced financial posture of Beazer after its payment to the law firm, reflected only a fraction of the actual losses brought about by fraudulent activities. As stated earlier, our designated function, in addition to investigating criminal activity, is to try to limit losses to the FHA insurance fund as well as to recover, to the fullest extent possible, losses caused by fraudulent loan activity. As

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<sup>1</sup> This is problematic for three reasons. First, the OUSA did not have the authority to prohibit HUD or the FHA from pursuing any civil or administrative remedies it may have wanted to initiate against Beazer. In fact, the Mortgagee Review Board, an entity of the Department, is required to take action against lenders it determines are violating HUD statutes, rules, and regulations, or are engaging in fraud. Second, this directly conflicts with the Department of Justice's stated policy to conduct parallel proceedings when possible. Finally, and practically, as the OUSA was not communicating with HUD or FHA, neither had any knowledge of this attempted effort to forestall any civil or administrative action.

you know, from my numerous previous testimonies to both the Senate and the House of Representatives, the results of the latest actuarial study showed that the FHA has sustained significant losses to its Single Family mortgage insurance program and that the reserve level mandated by statute has dropped below the 2 percent reserve requirement to a precarious .53 percent. Its reserve level had dropped from over \$21 billion two years prior to only \$3.6 billion due in large part to the falling housing market and there are deep concerns by our financial auditors that the reserve could go negative thus requiring an infusion of funds.

My charge to protect and mitigate impact on the Fund is imperative particularly at a time when the FHA is playing such a critical role to buttress the national mortgage and housing markets. Both the Department and the FHA, neither of which had been apprised by the OUSA of the impending settlement, shared our concerns regarding the terms of the proposed settlement. The Civil Division of the Department of Justice (DOJ), responsible for any parallel civil actions to recover losses caused by the fraud perpetrated by Beazer, was consulted by HUD and likewise told us that it had similar concerns. The OUSA had not apparently advised the Civil Division of the pending settlement or that it would waive any rights of the federal government to pursue civil remedies.

After we reached out to our Department and to divisions within the Department of Justice, the HUD OIG was informed by the OUSA, after the matter was finally settled with respect to the Beazer Corporation, that OIG agents would not be allowed to continue our efforts relating to an ongoing criminal investigation of the individuals behind the actions of the corporation. The HUD OIG was the lead investigative agency in this overall matter and had expended significant resources in this case particularly at a time when our limited resources are stretched thin due to oversight of the on-going mortgage crisis as well as of disaster-related rehabilitative efforts in hurricane-ravaged regions of the Gulf Coast and elsewhere.

Our primary concern in our dealings with the OUSA were to ensure that the Department, the FHA, and potentially Ginnie Mae (who securitizes FHA loan pools) were part of the settlement negotiation process so that their interests, and, hence, the American taxpayer's, could be adequately addressed and recovered. The removal of OIG agents on this case by the United States Attorney's office seems retaliatory against this organization for not agreeing to the OUSA's conditions of a deferred prosecution of Beazer. As a law enforcement official for over forty years in the Inspector General community, the United States Secret Service, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation and other places, I have never witnessed a like action in any of my varied dealings.

The HUD OIG maintains a presence in the State of North Carolina with an office in Greensboro. It is a very busy office dealing with investigations into potential violations of HUD-related program operations. It is critical to our ability to fulfill our mission that we have the full faith, confidence and cooperation of the various United States Attorneys in North Carolina, as we do enjoy across the United States, and that our independence and autonomy, provided for by the Inspector General Act, not be impinged upon. By apprising our own Department, and its agencies, of an impending settlement agreement, our ability to further conduct remaining investigatory work relating to Beazer principals appears to have been undermined. Even prior to this disclosure, because of the OUSA's inclination to give the private law firm of Alston & Bird autonomy, our investigative activities were curtailed.

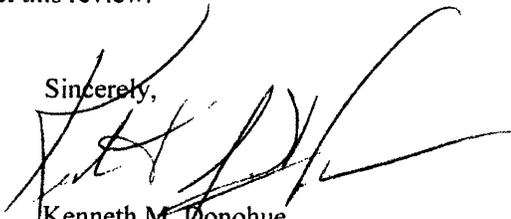
Lastly, a federal appointment recently has been made for the position of the United States Attorney for the Western District of North Carolina – filled by an Alston & Bird partner. To date, nothing has occurred to demonstrate that we will, in fact, be allowed to continue in the investigation of

individuals associated with Beazer which committed fraud against the United States.<sup>2</sup> We have now learned that another partner at Alston & Bird has been nominated to serve as the United States Attorney for the Eastern District of North Carolina. We have not had any prior dealings with either of these individuals. However, with both coming from the same law firm, it causes me worry that there might be residual effects from the Beazer matter that could impact our ability to work closely with, and have the full support of, the two Districts while being able to fully exercise our duty to the citizens of the State of North Carolina in the future including to investigate any remaining allegations associated with this case. The lack of progress of the prosecution of individuals potentially responsible for fraud in the Beazer matter raises additional issues. On July 6, 2010, I wrote to Attorney General Holder a letter that addressed these very concerns. As of this date, I have not received a written reply.

My office is at the forefront of ferreting out fraud in the mortgage industry and combating losses to the Department and its key agencies such as the FHA and the Ginnie Mae programs. Indeed, right now the FHA has close to \$700 billion of outstanding insurance in force and Ginnie Mae has a remaining principal balance of close to \$900 billion. Needless to say, anything short of due diligence is not an option. We have, and have had, a very close and productive relationship with the Department of Justice, the Attorney General, the Civil and Criminal Divisions, and many U.S. Attorneys Offices nationwide. Our successes and our leadership role in numerous Department of Justice initiatives on mortgage fraud are well-documented.

I believe this recitation of the details should answer the questions your Counsel posed. On a side note, I appreciate your years of steadfast support for Inspectors General throughout the federal government and for their ability to bring individuals and corporations to justice for defrauding the American taxpayers and for abusing the fiscal trust. I am available to meet with you or your staff to discuss these issues personally as you conduct this review.

Sincerely,



Kenneth M. Donohue  
Inspector General

Enclosures

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<sup>2</sup> Former Acting U.S. Attorney Ed Ryan did advise us telephonically about three months ago that we would be contacted when we would be allowed to participate in the investigation of individuals. Since that one contact, we have heard nothing from the Western District and are not aware that any criminal investigation is ongoing, another matter of great concern to us.

### Selected Beazer Events

Date	Event
March 18, 2007	The <i>Charlotte (N.C.) Observer</i> publishes articles concerning high foreclosure rates in subdivisions developed by Beazer Homes USA (BZH), a publicly-traded real estate developer headquartered in Atlanta, GA.
March 21, 2007	The Office of Inspector General, U.S. Department of Housing and Urban Development (HUD-OIG) opens an investigation of BZH and its subsidiary, Beazer Mortgage Corporation (BMC) (collectively, "Beazer").
March 21, 2007	HUD-OIG Special Agent contacts Assistant United States Attorney (AUSA) Michael Savage, Chief of the Criminal Division for the Office of the United States Attorney, Western District of North Carolina (USAO (WD-N.C.) to discuss the Beazer matter. AUSA requests HUD-OIG's participation in the case.
March 27, 2007	Beazer's Audit Committee retains the law firm of Alston & Bird, LLP to conduct an internal investigation.
April 5, 2007	Representatives from the USAO (WD-N.C.) meet with BZH corporate counsel in Charlotte, N.C. HUD-OIG personnel are not included in the meeting.
July 25, 2007	BZH announces that a previously-disclosed informal SEC investigation of its activities is now formal.
September 27, 2007	HUD-OIG Special Agent learns from SEC personnel that Alston & Bird has been providing monthly updates regarding the internal investigation of Beazer to the USAO (WD-N.C.).
October 12, 2007	HUD-OIG Special Agent suggests to personnel from USAO (WD-N.C.) that interviews of borrowers and former Beazer employees be attempted prior to an anticipated media event regarding the Beazer case, and provides a list of potential interviewees.

October 14, 2007	AUSA Savage rules out any interviews of borrowers and former Beazer employees by law enforcement agencies while Alston & Bird conducts internal investigation.
February 1, 2008	BZH issues a press release indicating that it is closing BMC nationwide.
March 18, 2008	BMC surrenders its FHA registration number and closes its doors.
November 21, 2008	AUSA Meyers meets with HUD-OIG Special Agent. AUSA Meyers reiterates that no interviews are to be conducted or testimony taken without the approval of the USAO (WD-N.C.). AUSA Meyers also forbids the taking of any administrative action by HUD against Beazer or any individuals until the criminal case is completed, or until his office otherwise approves it.
April 24, 2009	HUD-OIG field agents forward to Deputy Inspector General (DIG) an e-mail from AUSA Dana Washington, advising HUD-OIG of a forthcoming deferred prosecution agreement (DPA) with Beazer, and offering HUD-OIG the chance to provide a quote for an upcoming press release. This is the first time that anyone with HUD-OIG Headquarters had heard of the proposed settlement.
April 24, 2009	DIG contacts Counsel to the IG to inquire as to his knowledge of this impending development and if this seemed appropriate. IG Counsel and HUD Associate General Counsel advised they knew nothing of the DPA. No one with HUD had been approached by the USAO (WD-N.C.) about its views as to settlement, the terms of the settlement or the USAO (W.D.-N.C.)'s willingness to forgo administrative or civil actions as part of the settlement. IG decides that it is incumbent upon him to advise the Federal Housing Administration (FHA) Commissioner of the Beazer case's status and does so. HUD-OIG learns that Alston & Byrd was paid at least \$35 million dollars to conduct its internal review of Beazer.
May 1, 2009	The USAO (WD-N.C.) announces that it has reached an agreement to enter into a DPA with Beazer, whereby Beazer will not be prosecuted if it meets the DPA's terms, including contributing to a restitution fund to compensate victims of Beazer's conduct.

<p>May 4, 2009</p>	<p>AUSA Meyers sends an e-mail to DIG concerning the Beazer case and represents that HUD Associate Counsel has claimed that the FHA should be paid by Beazer before home owner victims receive any funds, and that the HUD-OIG agrees with this view. AUSA Meyers contends that paying FHA first would violate 18 U.S.C. § 3664(i). He asks DIG for HUD-OIG's position on this issue.</p>
<p>June 3, 2009</p>	<p>DIG sends an e-mail to AUSA Meyers and references an upcoming presentation by Alston &amp; Bird to various government officials involved in the case. DIG's e-mail asks AUSA Meyers whether he believes the presentation would impact the criminal prosecution, and also whether Alston &amp; Bird has debriefed the HUD-OIG agents investigating Beazer.</p> <p>AUSA Meyers replies by e-mail to DIG and states the following:</p> <p>--- That AUSA Meyers understands that HUD-OIG does not support the DPA with Beazer. AUSA Meyers states that because HUD-OIG was "part of the investigative team and understands that we must present a united front," the Office of the U.S. Attorney (WD-N.C.) assumed HUD-OIG would agree to the DPA.</p> <p>--- Warning that HUD-OIG's participation in the continuing investigation into Beazer will be affected by whether HUD-OIG supports the proposed DPA.</p>
<p>June 10, 2009</p>	<p>Inspector General advises U.S. Attorney Ed Ryan (WD-N.C.) by letter of his concerns stemming from AUSA Myers' June 4 e-mail to Deputy Inspector General and letter expresses that his decision to inform FHA of the proposed DPA "was seen by [Ryan's office] with trepidation and disloyalty." Inspector General seeks clarification of AUSA Meyers's statements.</p>
<p>July 29, 2009</p>	<p>AUSA Meyers telephones HUD-OIG Special Agent to tell him that the USAO (WD-N.C.) has decided to prosecute individuals related to Beazer, but without HUD-OIG's further involvement in the investigation or prosecution. As of August, 2010, no prosecution or investigation, that HUD OIG is aware of, has occurred.</p>
<p>August 20, 2009</p>	<p>HUD-OIG has received no reply from U.S. Attorney Ryan to Inspector</p>

	General Donohue's June 10 letter. HUD-OIG Assistant Inspector General for Investigations (AIGI) meets with U.S. Attorney Ryan in his office in Charlotte to discuss the matter. U.S. Attorney Ryan advises AIGI that he will contact him shortly with a decision regarding HUD-OIG's continued participation in the Beazer case.
November 5 & 6, 2009	On November 5, Inspector General and AIGI meet with Assistant Attorney General Lanny A. Breuer of DOJ to discuss the Beazer case and other topics. By letter dated November 6, Inspector General reiterates that the USAO (WD-N.C.) excluded HUD-OIG from the Beazer case once it perceived that HUD-OIG might not support the DPA. The letter also notes that U.S. Attorney Ryan had not yet responded to Inspector General June 10 letter, nor made any decision regarding HUD-OIG's continued participation in the Beazer case.
November 30, 2009	Alston & Bird partner Thomas G. Walker is nominated to serve as the United States Attorney for the Eastern District of North Carolina.
December 23, 2009	Alston & Bird Partner Anne M. Tompkins is nominated to serve as the United States Attorney for the Western District of North Carolina.
April 22, 2010	Tompkins is confirmed as the United States Attorney for the Western District of North Carolina.
August 10, 2010	As of this date, HUD-OIG has not received any written replies from U.S. Attorney Ryan regarding Inspector General June 10, 2009 letter, from Attorney General Holder regarding Inspector General July 6, 2010 letter, nor a reply regarding HUD-OIG's continued participation in the Beazer case. To our knowledge, the federal investigation into Beazer is at a standstill.

cc: G  
GC  
GF

Senator Grassley-Kenneth Donohue re BEAZER MORTGAGE CORP, 8-10-2010