The Fog of Corporate Welfare

By Mel Lavine

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Last week I noted that banks accepted responsibility in billions for foreclosure abuses. But, as Gretchen Morgenson, a financial writer for the New York Times, cautioned, "If you were hoping that things might be different in 2013 – you know, that bankers would be held responsible for bad behavior or that the government might actually assist troubled homeowners – you can forget it."

The settlement, she said, does not end foreclosure abuses but "more of the same: no accountability for financial institutions and little help for borrowers."

This past Sunday we learn from the same indispensable columnist that the rules are so written that banks may be able to deduct the fines from their income taxes. On paper the penalties seem huge: billions for "supposed mortgage abuses," and billions for "questionable

foreclosures." But, in fact, it's a mirage.

"The dollar signs are big, but they aren't as big as they look, at least for the banks. That's because some or all of these payments will probably be tax-deductible. The banks can claim them as business expenses. Taxpayers, therefore, will likely lighten the banks' load."

Morgenson is one writer who helps us see more clearly through the fog of corporate welfare. Because of her reporting and that of others, the public recognizes wrongdoing when business gains tax benefits from spending to fix unlawful deeds. She cites the $10 billion tax break BP got by writing off $37.2 billion in expenses in cleaning up the oil spill in the Gulf of Mexico.

With news of multi-billion dollar mortgage settlements this year and last, she asks, "Why should taxpayers subsidize corporations that are paying to right sometimes egregious wrongs? This is a particularly weighty question, given the urgent need for tax revenue to offset the ballooning federal budget deficit."

But, although "money paid to settle a company's actual potential for a civil or criminal penalty is not deductible, this being taxes, the issue is complicated." She quotes Robert W. Wood, a well-known tax lawyer, who said in a 2009 article, "The tax deduction for business expenses is broad enough to include most settlements and judgments."

Wood, the author of “Taxation of Damage awards and Settlement Payments,” acknowledged in an interview last week, that he didn’t know the details on the mortgage settlements “but if any of the of the lenders are putting a bunch of money into a pot that goes to help people, yes, I would assume that everybody will deduct that.”

Joe Nocera, a Times columnist who also helps readers find their way through the financial fog, writes this week that the government “fumbled” in the way it has handled the crisis. He says, “The government insisted that the banks hire expensive consultants to do a review of every foreclosure that took place in 2009 and 2010. The consultants racked up more than a $1 billion in fees, while proceeding at such a molasses like pace that the feds and the banks finally threw up their hands. The settlement made the whole thing go away.” In fact, the $8.5 billion settlement between regulators and 10 banks “over their foreclosure misdeeds is more about public relationships than problem solving” to help troubled homeowners.

No one is held accountable. “The settlement covers 3.8 million foreclosures or about $3.3 billion, or about $1,150 per lost home...The money is being distributed with no regard to whether a borrower suffered harm...those who really were truly harmed by bank behavior will be shortchanged.”

Nocera cites Karen Petrou, a prominent banking consultant, as saying the government has “come up with something that gives every borrower – maybe – a pittance and leaves the truly hurt – and there were many – as much in the lurch as before.”

Mel Lavine was a television producer for many years with NBC News and CBS News in New York. Contact him at his e-mail address: mellavine@aol.com.