POLITICO

On Wednesday, Keith Noreika challenged Richard Cordray to publish reams of data on credit card costs and let the public figure out who got the numbers right. | Getty Images

'Plague on both your houses': Cordray, Noreika get scolding from statisticians

By **LORRAINE WOELLERT** | 10/19/2017 11:23 AM EDT | Updated 10/19/2017 01:20 PM EDT

Lies and damned lies are usually avoided in polite company. Which brings us to statistics — and an escalating public duel between Richard Cordray and Keith Noreika.

In an ideological showdown disguised as a math spat, the financial regulators — one an Obama appointee and the other a Trump pick — are brawling over probability, regression and coin flipping as they trade blows over the merits of class-action lawsuits.

On Wednesday, Noreika, the acting comptroller of the currency, challenged Cordray, director of the CFPB, to publish reams of data on credit card costs and let the public figure out who got the numbers right.

“There’s an easy way to solve this. Release the data and let the people decide,” Noreika told POLITICO. “They say, 'Trust us and don’t believe the other people.' That is not good government to me. It’s bordering on breach of trust.”

The throwdown is part of a bigger battle being fought between outgoing Democrats and their consumer allies and ascendant Republicans looking to make life easier for big business. The CFPB rule was a victory for plaintiff lawyers, who have watched mandatory arbitration mushroom thanks in part to industry crusade to rein in big lawsuits.

The current scuffle started in July, when Cordray banned the use of legal contracts that prevented consumers from filing class-action lawsuits against their credit card issuers, banks and credit unions. It plays out as Senate Republicans work to overturn the rule and businesses, led by the U.S. Chamber of Commerce, try to block it in court.

Before issuing the rule, the CFPB looked for evidence that opening the door to class-action lawsuits might lead to higher prices for consumers. The theory was that the threat of litigation might lead to higher credit card rates, for example, because financial companies would raise prices to pay for all the lawyers they’d need when aggrieved customers marched into court.

The bureau lucked into an ideal data set. Four big banks had been sued by customers complaining about mandatory arbitration. In the course of settling the lawsuit, the banks agreed to strike arbitration clauses from the fine print of their credit card contracts.

The bureau found no statistically meaningful evidence that credit card customers paid a price after the arbitration clauses disappeared. It also admitted the research wasn’t perfect.

“Our analysis cannot be interpreted as establishing that companies did not save money from their use of pre-dispute arbitration clauses,” the CFPB wrote. “It is also possible that companies that stopped using arbitration provisions did, in fact, incur higher costs, but opted against passing those costs to consumers.”

Looking at the same data, the Office of the Comptroller of the Currency reached a very different conclusion. Last month, it said there was an 88 percent chance that the rule would increase the cost of credit. Cordray called the calculation “bogus.”

"It's not a math error," Noreika told POLITICO. "If there's an 88 percent chance of a hurricane, you want the National Weather Service to tell you that."

Cordray called the bureau's research "the most comprehensive analysis of arbitration clauses ever conducted."

"The OCC acting comptroller's latest gratuitous attempt to undermine our rule relies on demonstrably bogus analysis that flunks basic economics and statistics," he said in a written statement to POLITICO.

At the root of the fight is something called a p-value, a number between zero and one that measures the strength of evidence against a theory. The smaller the number, the stronger the evidence that the theory is wrong.

The CFPB's p-value indicated that consumer costs might rise if arbitration was abolished. But the data was so noisy, so imperfect, that it was hard to tell what was really going on. Indeed, the method can be so prone to misinterpretation that the American Statistical Association last year warned policymakers to stop making decisions based solely on p-values, saying they were "never intended to be a substitute for scientific reasoning."

In Cordray v. Noreika, statisticians find fault on both sides.

"A plague on both your houses. There isn't strong evidence either way," said Bruce Meyer, a professor at the University of Chicago.

"There is weak evidence that says more than likely there is a positive effect on the cost of credit," Meyer said of the OCC analysis. "But the accepted approach is you don't crow about something unless you have stronger evidence."

As for Cordray's rebuttal, "it was wrong, too," Meyer said. "You can say that there's an 88 percent probability if you believe that the study that's being quoted. There are always potential problems with research studies."

Then there's the problem of the CFPB's original study, conducted in 2015. While the bureau found no "statistically significant" effect from banning arbitration clauses, the OCC said, it didn't take the important next step of examining economically significant effects — if consumer costs did indeed rise, how bad might it be?

The CFPB's own rule, however, did acknowledge that banning mandatory arbitration would lead to 103 more federal class action settlements a year, and higher costs to providers and their customers. The agency also said the impact would be minimal, only about a dollar a year per bank or credit card account.

Campbell Harvey, a Duke University professor and a past president of the American Finance Association, scolded both the bureau and OCC for fighting over things like p-values, which can be hacked or manipulated. He called the OCC's probability calculations "vague" and said agency researchers "left themselves open to criticism that they don't understand basic statistics."

But he also said both sides should stop bickering and rethink what's important. In that light, he noted that the CFPB couldn't rule out the chance, however remote, that an arbitration ban could increase the cost of consumer borrowing by more than 3 percentage points.

"By standard methods we wouldn't consider this significant. That doesn't mean that you ignore it," Harvey said. "While it's not significant at traditional levels, so what? It could be economically important."

This story has been updated to add CFPB estimates on the cost of the rule.