Legal consequences of lying on a credit card application

Puffing up your income isn't fibbing, its fraud, and you can be jailed for it

By Martin Merzer

This is a cautionary tale to keep in mind the next time you're filling out an application for a new credit card.
Once upon a time, not very long ago, there was a man named David P. Gaylord who lived in Rochester, N.Y. He allegedly inflated his reported income on three credit card applications. Now, lots of time hangs over him -- up to 90 years in the slammer, if he is convicted.

"It is not a good idea to lie on a credit application," said Assistant U.S. Attorney Tiffany Lee, who is prosecuting the case.

Pretty much everyone involved in the case acknowledges that it is unusual. The federal statute cited in the grand jury indictment -- Title 18 of the U.S. Code, Section 1014 -- usually comes into play amid allegations of bank fraud related to bogus checks, mortgage applications or requests for farm loans, lines of credit or other forms of business loans. At the same time, most instances of credit card fraud involve some form of identity theft.

Tough times tempt lies
But if you apply for a credit card, especially during difficult economic times that might give rise to temptation, you should find it sobering to know that substantially inflating or, theoretically, even slightly embellishing your reported income can get you prosecuted under federal bank fraud statutes. The penalty is up to 30 years in federal prison and a fine of up to $1 million, for each instance.

"The federal statute does make it a crime to submit any false financial information to most banks and it does get used, from time to time, for these kinds of prosecutions," said John Rao, an attorney for the National Consumer Law Center, a Boston-based group that focuses on consumer credit and bankruptcy issues.
Uncommon is the bank or other credit card issuer that doesn't have some connection to the Federal Reserve Board or other element of the federal banking system, thus putting that card issuer -- and anyone who applies to it for credit -- under the expansive reach of federal law.

"The scope of that statute is pretty broad because so many financial institutions are somehow affiliated with a national bank," Roa said.
The statute covers oral or written false statements or misrepresentations knowingly made on a loan or credit application to an insured bank. The statements or misrepresentations must have been *capable* of influencing the bank's credit decision, though the applicant can be charged even if the loan wasn't approved.

Not a primary legal weapon
When it comes to credit card applications, Roa and other experts said, the statute usually is employed against someone who has attracted prosecutorial attention involving other financial matters -- even outright fraud. If prosecutors think you're a bad guy, they'll hit you with whatever they think will stick, as mobster Al Capone found in the '30 when convicted of tax evasion.

"This is pretty unusual," said Nessa Feddis, vice president and senior counsel for the American Bankers Association, which represents credit card issuers and nearly all of the nation's banks. "Generally speaking, banks don't go around looking to prosecute customers who lie about their income. The person charged may have done something particularly egregious."

According to the indictment, issued on June 17, 2011, but related to events that occurred five years earlier, Gaylord engaged in an escalating series of attempts to qualify for credit cards by puffing up his income. In April 2006, he allegedly told Advanta that he earned $90,000 a year. In August 2006, he allegedly told Family First Federal Credit Union that he earned about $110,000 a year. In September 2006, he allegedly told Bank of America that his total household income was $122,000 a year.

Gaylord, now 50, and at one time a real estate agent, earned "substantially less" than any of those amounts, according to the indictment.

A bankruptcy filing appears to be related to the case. According to records on file at the United States Bankruptcy Court for the western district of New York, Gaylord filed for Chapter 7 (debt liquidation) bankruptcy on Jan. 16, 2008.
He claimed assets of $135,058.72 and debts of $341,118.86. According to the filing, he owed $17,000 on the Advanta credit card, $57,141 to Bank of America, $12,588 to the Family First Credit Union, $85,312 to various other credit card companies, and $49,024 related to debts owed to Wells Fargo bank.
Lee, the prosecutor, said she couldn't comment on any specifics involved in the genesis of the case.
"We worked with the FBI on an investigation and we presented it to the grand jury," she said. "We have had other prosecutions under the statute for making false statements on credit applications, but I don't want to comment on whether we're seeing a trend here."

Income statements get more scrutiny
It should be noted that the Credit CARD Act of 2009 requires banks and other credit card issuers to weigh -- more carefully than in the past -- applicants' abilities to pay their credit card bills. That could include a request for substantiating documentation of income. Another option is a careful, statistically based behind-the-scenes assessment of the applicant's credit history, Internal Revenue Service databases, etc.

In either case that process could make misrepresentations easier to detect and it could render applicants more vulnerable not only to credit rejections but also -- as we now see -- to federal prosecution, however rare that might be.
"Consumers have to look carefully at any application that they submit, even if it's filled out by someone else," Rao said. "Obviously, no one should ever submit a false application for a credit card or anything else."

Gaylord did not respond to a request for comment. His attorney, Ann Berger, a federal public defender, said she had no comment on the case. Lee said that Gaylord was arrested on the basis of the indictment and released on his own recognizance, pending trial.

And so, it appears that the moral of our cautionary tale is this:
When it comes to filling out credit card applications, it's really not wise to play make believe.

"Always remember what your mother told you," Feddis said. "It's never a good idea to lie."