1. There is an international intergovernmental organization called the Financial Action Task Force (FATF). The U.S. is a founding member and a strong supporter of FATF. Although FATF only has 36 members, FATF is part of a global network of FATF-Style Regional Bodies (FSRBs) and so FATF principles apply in most countries of the world.

2. FATF has adopted a series of Recommendations with which it expects its members (and global networks) to comply. These Recommendations are directed towards the “gatekeepers” who are in a position to facilitate – or hinder – money laundering and terrorist financing. These Recommendations were originally known as the 40+9 Recommendations. (The original 40 Recommendations focused on combating money laundering; the 9 special Recommendations were adopted shortly after 9-11 and focused on stopping terrorist financing.) The FATF Recommendations were renumbered and updated in February 2012. The new FATF 40 Recommendations are found here: http://www.fatf-gafi.org/media/fatf/documents/Recommendations/pdfs/FATF_Recommendations.pdf. Lawyers – along with accountants, real estate agents, casinos, and precious metal dealers – are among the “gatekeepers” to whom the FATF 40 Recommendations apply.

3. FATF does not have the power to adopt legally binding Recommendations. BUT…. FATF countries have agreed to implement the Recommendations. They have also agreed that those FATF countries that do not do so may be excluded from FATF. See http://www.fatf-gafi.org/pages/aboutus/membersandobservers/fatfmembershippolicy.html. FATF members use a “mutual evaluation procedure” to evaluate a country's compliance with the FATF Recommendations.

4. In its last FATF evaluation, the U.S. was rated “noncompliant” with respect to the U.S. legal profession’s implementation of the FATF Recommendations.

5. The U.S. government is extremely committed to FATF since it uses the FATF Recommendations as part of its global fight against money laundering and terrorist financing. In my view, if the U.S. believed that it might be excluded from FATF as a result of U.S. legal profession “noncompliant rating,” the federal government might try to preempt the offending state regulations in question.

6. The U.S. is scheduled to have its next FATF Mutual Evaluation visit sometime in 2015, with the FATF Plenary Discussion tentatively scheduled for February 2016. FATF Members have agreed that during this round of Mutual Evaluations, efforts would be made to measure not just technical compliance with the 40 Recommendations, but also the “effectiveness” of a country’s measures. It is in the U.S. legal profession’s interest to be able to show by February 2015 as much compliance as possible with the FATF Recommendations.

7. The ABA Task Force on Gatekeeper Regulation and the Profession has assembled a number of resources for state regulators to use to educate their lawyers so that the lawyers do not unwittingly assist money laundering or terrorist financing. These resources are found here: http://www.americanbar.org/groups/criminal_justice/gatekeeper.html

8. A number of states have run CLEs, created webpages, and undertaken efforts to educate their lawyers about these FATF/Gatekeeper/money-laundering/terrorist financing issues. Given the February 2015 FATF “Mutual Evaluation” of the U.S., it would be desirable to be able to point to as many states as possible and show that they have made efforts to educate their lawyers about these issues.
9. While some of the FATF Recommendations are completely inconsistent with the traditional U.S. lawyer-client relationship (including Recommendations that lawyers report suspicious transactions to the government and avoid “tipping off” their clients), other FATF Recommendations ARE consistent with U.S. legal ethics rules. For example, the May 2013 ABA Formal Ethics Opinion 463 concluded that it is completely consistent with U.S. ethics for lawyers to “know your client” (KYC) and to perform due diligence so that the lawyers do not inadvertently assist their clients’ efforts to engage in money laundering or terrorist financing.

10. Education efforts for U.S. lawyers are critical because these criminals and terrorists are sophisticated and U.S. lawyers may not be familiar with the ways in which these criminals might try to exploit their services. For example, an article entitled “Funding Terror, U. Pa. L. Rev. (2014), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2231344 reported the results of an empirical study in which fake emails with “red flag” suspicious information were sent to U.S. and foreign lawyers and others asking them to form a shell corporation and shield identifying information, even if that information was otherwise required to be disclosed. The good news is that U.S. lawyers performed relatively well in responding; the bad news is that some U.S. lawyers responded positively to these fake emails. Thus, education seems worthwhile. The ABA’s Voluntary Good Practices Guidance, which has been endorsed by a number of organizations and the U.S. Department of the Treasury, provides guidance to U.S. lawyers.

11. The ABA and a number of other U.S. legal profession organizations (along with legal profession organizations in other countries) are committed to working with FATF to change those Recommendations that are fundamentally inconsistent with the role of the lawyer with respect to the rule of law and in the administration of justice. But the U.S legal profession is committed to educating lawyers so that they do not inadvertently assist money-laundering or terrorist financing. Education efforts by state bars and regulators would reflect well on the U.S. as it undergoes its next FATF Mutual Evaluation.

12. For additional information, feel free to contact the author. See also the ABA Gatekeeper webpage cited above, the 2014 NYLS FATF Symposium, which was the first law school Symposium on this topic, http://www.nylslawreview.com/financial-action-task-force-program/ ; the February 2012 program of the National Organization of Bar Counsel, see http://tinyurl.com/NOBC-FATF and slides found at http://tinyurl.com/AALS-FATF and http://tinyurl.com/Terry-FATF-2014.

SAMPLE STATE BAR EDUCATION WEBPAGES:

http://www.msba.org/links/
http://www.nmbar.org/