

CAPTURED GATEKEEPERS: CONTROLLING ENTRY INTO LICENSED PROFESSIONS

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INTRODUCTION

Every year, hundreds of thousands of Americans enroll in degree programs in medicine, dentistry, law, and other licensed professions. Before a program can enroll students who receive federal financial aid, and before its graduates can sit for a licensing exam, the program must be accredited by a private agency recognized by the U.S. Department of Education. These programmatic accreditors are the gatekeepers of the professions: they decide which programs may open, which may grow, and which must close.

Federal regulations require recognized accreditors to be “separate and independent” of any affiliated professional or trade association. The logic is simple. Associations represent the practitioners already in a profession, and incumbents benefit when the supply of new competitors is restricted. Yet, the organizational ties between accreditors and their affiliated associations have received almost no systematic scrutiny. Our research asks a basic question: how independent are these gatekeepers in practice?

We assembled a new dataset from seven years (2017–2023) of IRS Form 990 filings for all 25 federally recognized programmatic accreditors and their affiliated associations, spanning the health professions, law, the arts, theology, and funeral service. The filings let us measure three channels of structural capture: structural subordination (the accreditor has no legal identity apart from the association), financial entanglement (shared budgets, management fees, and grants), and governance overlap (shared board members and executives). We combined these into a Regulatory Capture Index (RCI) that runs from 0 (fully independent) to 1 (fully captured).

POLICY RECOMMENDATIONS

- ① **Require organizational independence.** Amend the federal recognition rules (34 C.F.R. Part 602) so that no recognized accreditor may operate as an unincorporated division, council, or commission of a professional or trade association. Every accreditor should have its own tax identification number, its own articles of incorporation, and file its own Form 990.
- ② **Require independent boards.** At least 60 percent of an accreditor’s voting board members should be individuals who are not current officers, directors, or employees of any affiliated association, with no member serving more than two consecutive three-year terms.

KEY FINDINGS

Capture is the norm, not the exception.

Twenty-two of the 25 accreditors either file under their association’s tax identification number or are legally the same organization as the association. Only three—the accreditors for nursing (ACEN), naturopathic medicine (CNME), and public health (CEPH)—are separately incorporated and file their own returns.

Fourteen of the 18 health-profession accreditors score the maximum RCI of 1.0,

including those for medicine, dentistry, nursing, and physical therapy. These are precisely the fields in which restricting the pipeline of new programs delivers the largest reward to incumbents, since accreditation controls not just access to federal aid but eligibility for the licensing exam itself.

Across seven years, no accreditor-association pair altered its organizational form.

Scores are either near 1 or near 0; there is no middle ground.

The most captured arrangements leave the least evidence.

A shared legal identity generates no arm’s-length financial or board records, making it difficult for regulators to observe. Existing conflict-of-interest rules, which target individual reviewers, coexist comfortably with total structural capture.

Independence is feasible,

however: the engineering accreditor ABET was founded by professional societies yet governs itself at arm’s length from them.

- 3 Cap financial dependence. No recognized accreditor should derive more than 15 percent of its annual revenue from any single affiliated association through grants, management fees, shared services, or in-kind support, mirroring the independence thresholds already applied to auditors and credit rating agencies.
- 4 Repeal the grandfather waiver. Section 602.14(d) exempts any accreditor recognized before October 1, 1991, from the separation requirement. Because most health-profession accreditors predate that cutoff, the rule that ostensibly guarantees independence applies to almost none of them.
- 5 Mandate structured disclosure. Require recognized accreditors to publish, annually and in machine-readable form, their board composition, all financial flows to and from affiliated associations, and shared-service contracts, so that the Department's advisory committee (NACIQI) can assess independence from data rather than self-reported narratives. The Department's August 2026 proposed rule moves in this direction and should be finalized.

SUMMARY

The federal government has delegated the power to control entry into America's licensed professions to private accreditors, and nearly all of them are structurally fused with the associations whose members benefit from restricting that entry. This is not a story about bad actors; it is a story about organizational design. Procedural safeguards cannot fix a structure in which the regulated sit in authority over the regulator. When corporate boards and audit committees faced the same conflict, the response was structural: separate legal identity, independent directors, financial limits, and transparent disclosure. The same remedies apply here. The Department of Education already has the legal authority to require structural independence as a condition of recognition and should use its authority to do so.



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Source

Cutsinger, Bryan, and Siri Terjesen. 2026. *Captured Gatekeepers: Structural Conflicts of Interest in U.S. Higher Education Accreditation*. *European Economic Review*, 190, 105467.

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