In light of the recent United States Supreme Court decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer*,[[1]](#footnote-1) and the United States Attorney General’s October 7, 2017, Memorandum on Federal Law Protections for Religious Liberty pursuant to Executive Order No. 13798,[[2]](#footnote-2) the Department proposes revising the current regulations regarding the eligibility of faith-based entities to participate in the Federal Student Aid programs authorized under title IV of the Higher Education Act of 1965, as amended, and the eligibility of students to obtain certain benefits under those programs. The current regulations could be interpreted to discriminate against otherwise eligible students and faith-based entities by disqualifying them from title IV, HEA programs solely because of their religious beliefs or status in violation of the Free Exercise Clause of the First Amendment to the United States Constitution. The proposed revisions guard against such discrimination and make clear that title IV, HEA programs remain available to all eligible entities and students regardless of their religious status or beliefs.

In *Trinity Lutheran*, the Supreme Court held that laws and policies which provide public benefits in a way that is “neutral and generally applicable without regard to religion” do not offend the First Amendment, but policies that “single out the religious for disfavored treatment” violate the Free Exercise Clause. The Free Exercise Clause “‘protect[s] religious observers against unequal treatment’” and “guard[s] against the government’s imposition of ‘special disabilities on the basis of religious views or religious status.’” Accordingly, the government cannot categorically exclude faith-based entities from a neutral and generally available government benefit program.

Additionally, the Attorney General’s Memorandum provides that “individuals and organizations do not give up their religious-liberty protections by providing or receiving social services, education, or healthcare.” For example, the government may not “deny religious schools—including schools whose curricula and activities include religious elements—the right to participate in a voucher program.” The Attorney General admonishes executive agencies not “to discriminate against religious organizations in their contracting or grant-making activities” but to give “[r]eligious organizations . . . the opportunity to compete for government grants or contracts and participate in government programs on an equal basis with nonreligious organizations.”

In accordance with the Supreme Court’s holding in *Trinity Lutheran* and the Attorney General’s Memorandum on Federal Law Protections for Religious Liberty, the Department’s proposed revisions affirm that eligible students or faith-based entities need not disavow their religious beliefs or status to participate in title IV, HEA programs. The Department looks forward to discussing these proposed revisions with the Faith-Based Institutions Subcommittee.

1. 137 S. Ct. 2012 (2017). [↑](#footnote-ref-1)
2. U.S. Att’y Gen. Memorandum on Federal Law Protections for Religious Liberty (Oct. 6, 2017) (hereinafter “Mem.”), <https://www.justice.gov/opa/press-release/file/1001891/download>. [↑](#footnote-ref-2)