

affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits or services to individuals with a disability or to any class of individuals with a disability than is provided to others unless such action is necessary to provide qualified individuals with a disability with aid, benefits or services that are as effective as those provided to others;

(v) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with a disability and for nondisabled persons, but must afford individuals with a disability equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the individual's needs.

(3) Even if the Department is permitted, under paragraph (b)(1)(iv) of this section, to operate a separate or different program for individuals with a disability or for any class of individuals with a disability, the Department must permit any qualified individual with a disability who wishes to participate in the program that is not separate or different to do so.

(4) The Department may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would:

(i) Subject qualified individuals with a disability to discrimination on the basis of disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with a disability.

(5) The Department may not, in determining the site or location of a facility, make selections the purpose or effect of which would:

(i) Exclude individuals with a disability from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Department; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with a disability.

(6) The Department, in the selection of procurement contractors, may not use criteria that subject qualified individuals with a disability to discrimination on the basis of disability.

(7) The Department may not administer a licensing or certification program in a manner that subjects qualified individuals with a disability to discrimination on the basis of disability, nor may the Department establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with a disability to discrimination on the basis of disability. However, the programs or activities of entities that are licensed or certified by the Department are not, themselves, covered by this part.

(c) The exclusion of nondisabled persons from the benefits of a program limited by Federal statute or Executive order to individuals with a disability or the exclusion of a specific class of individuals with a disability from a program limited by Federal statute or Executive order to a different class of individuals with a disability is not prohibited by this part.

(d) The Department shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with a disability.

#### **§ 15.40 Employment.**

No qualified individual with a disability shall, on the basis of that disability, be subjected to discrimination in employment under any program or activity conducted by the Department. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1614, shall apply to employment of Federally conducted programs or activities.

#### **§ 15.49 Program accessibility; discrimination prohibited.**

Except as otherwise provided in § 15.50, no qualified individual with a disability shall, because the Department's facilities are inaccessible to or unusable by individuals with a disability, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Department.

#### **§ 15.50 Program accessibility; existing facilities.**

(a) *General.* The Department shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with a disability. This paragraph (a) does not require the Department:

(1) To make structural alterations in each of its existing facilities in order to make them accessible to and usable by individuals with a disability where other methods are effective in achieving compliance with this section; or

(2) To take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Department personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Department has the burden of proving that compliance with this paragraph (a) of this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Secretary of Homeland Security (or his or her designee) after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Department shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with a disability receive the benefits and services of the program or activity.

(b) *Methods.* The Department may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with a disability. The Department, in making alterations to existing buildings, shall meet accessibility requirements to the extent required by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the