



**Legal Opinion L-2002-05**  
**April 10, 2002**

U.S. Railroad Retirement Board Phone: (312) 751-7139  
844 North Rush Street TTY: (312) 751-4701  
Chicago Illinois, 60611-2092 Web: <http://www.rrb.gov>

**TO** : Candace M. Gabriel  
Director of Equal Opportunity

**FROM** : Steven A. Bartholow  
General Counsel

**SUBJECT** : Judicial Remedy under Section 504 of the Rehabilitation Act

This is in response to your memorandum dated March 28, 2002, wherein you inquired about what judicial remedies, if any, are available to individuals under section 508 of the Rehabilitation Act (29 U.S.C. § 794d). You raised this question in connection with your drafting of procedures under section 508 of the Rehabilitation Act.

The remedies for a violation of section 508 are the same as those for a violation of section 504 (29 U.S.C. § 794). The remedies for a violation of section 504 are set forth in section 505(a)(2) of the Rehabilitation Act (29 U.S.C. § 794a(a)(2)). That section provides as follows:

(2) The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 [42 U.S.C. §§ 2000d et seq.] shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 504 of this Act.

This section has been found to create a private right of action against providers of federal assistance. See Camenisch v. University of Texas, 616 F. 2d 127 (5<sup>th</sup> Cir. 1980); NAACP v. Medical Center, Inc., 599 F.2d 1247 (3<sup>rd</sup> Cir. 1979); Davis v. Southeastern Community College, 574 F.2d 1158 (4<sup>th</sup> Cir. 1978), rev'd on other grounds, 442 U.S. 397, 99 S.Ct. 2361, 60 L.Ed.2d 980 (1979); Leary v. Crapsey, 566 F.2d 863 (2d Cir. 1977); and Lloyd v. Regional Transportation Authority, 548 F.2d 1277 (7<sup>th</sup> Cir. 1977). However, the United States Supreme Court has held that no money damages are available against the United States or an agency of the United States. In Lane v. Frederico F. Pena, 518 U.S. 187, 135 L.Ed.2d 486, 116 S. Ct. 2092 (1996), the Court held that section 505 was not the explicit waiver of the sovereign immunity of the United States required for the award of money damages. While other remedies are available against the United States, no money damages may be awarded.

In conclusion, it is my opinion that while a party aggrieved of the Board's actions under either section 504 or 508 of the Rehabilitation Act may seek a remedy in a United States District Court, no money damages may be awarded for a violation of either section 504 or 508 of the Rehabilitation Act. In view of the uncertainty of any remedy available for a violation of section 508, I would recommend against adding anything to our procedures regarding any possible judicial action.