

QUESTION: Suppose I was going to sell insurance to customers for a niche market product, and I wanted to start a trade association. These customers could pay annual membership dues to join the association and gain access to various business resources. The resources would be related to safety and business practices. In exchange for membership and satisfying all of the safety/good housekeeping requirements, they would get an added discount on their insurance premiums. Are there any legal issues that could arise from an agency selling insurance and also managing an association that customers pay to join, but that also makes their operations safer and earns them premium discounts?

ANSWER: It's not exactly the same thing, but one of the [last advisory legal opinions](#) that the New York State Department of Financial Services (DFS) published touched on this. From reading this and other opinions, I gather that:

- There's no law against an insurance agency running a not-for-profit trade association
- The agency cannot pay the association for referring association members to it for purchasing insurance, but the agency can reimburse the association for documented expenses.
- IF the agency is an appointed agent of the insurer providing the coverage, the agency cannot charge association members service fees, but it can charge consulting fees for things like providing loss control services. Similar insureds should be charged similar amounts to avoid allegations of violating the rebating law.
- Any premium discounts for association members must be provided for in the insurer's rate filings with DFS.

If an agency were going to form an association for the purposes you described, I suspect that the association should be a corporation or other entity separate from the agency. You don't want to run the risk of being accused of doing insurance business under an unlicensed name – a few agencies [got penalized for that recently](#). Better to keep the entities legally separate, with the association management services being provided by one entity and insurance procurement provided by the other. Your agency's attorney should be able to counsel you on the best way to set this up.