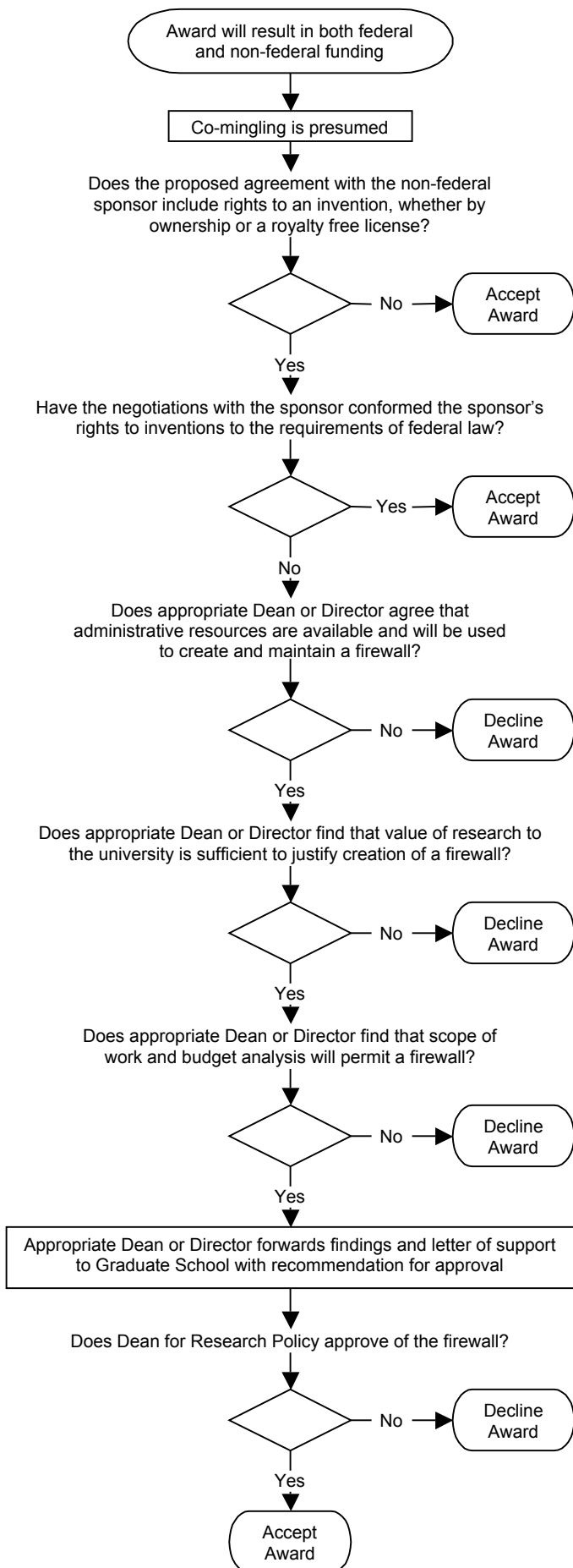


Flow Chart for Building a Firewall



Federal Co-mingling Analysis

Research Agreement Review (Front End)

Notes

If only federal funds are present in a lab, then the co-mingling analysis does not apply. However, if in the future non-federal funding is obtained, then it will be necessary to conduct a co-mingling analysis.

If only non-federal funds are present, then no federal co-mingling analysis is required. However, if federal funds are received in the future, there may be conflict between the requirement, under Bayh-Dole, and past promises made to the non-federal sponsor regarding rights to research-related inventions. Any such conflict must be resolved prior to accepting federal awards. Although not specifically addressed in this flow chart, it is important to assure that there is no conflict among the rights granted to multiple non-federal sponsors.

Notes

A firewall requires that:

1. The scope of work of the federal and the private project are so different that no invention arising out of the non-federal project could be a subject invention under Bayh-Dole, and
2. The private funding is sufficient to entirely support the proposed project, and
3. Administrative resources are in place to establish and maintain the firewall.

A firewall may also be used when the researcher wants to insulate pre-existing technology from the application of Bayh-Dole, the law relating to inventions with federal funding.

Disadvantages of a firewall:

1. Inhibits the normal flow of research.
2. Giving the right to a patent to an industry or other non-federal sponsor may result in a broad filing that blocks future opportunities to work with other non-federal sponsors.
3. Maintaining a firewall is labor-intensive and may detract from other research.