1. **What is Form I-9?**
   Form I-9 is the Employment Eligibility Verification Form issued by the Department of Homeland Security, U.S. Citizenship and Immigration Services. By law all U.S. employers are responsible for completion and retention of Forms I-9 for all U.S. citizen as well as non-U.S. citizen employees hired for employment in the U.S. on or after November 6, 1986. This process, which includes an employee’s attestation of work authorization and an employer’s review of the documents presented by that employee to demonstrate identity and work authorization, is the means by which U.S. employers document that they have verified whether a newly hired employee is eligible to work in the U.S. The employee and employer both must provide information and signatures as indicated on the form.

2. **How do I obtain the Form I-9?**

3. **Who needs to complete a Form I-9?**
   Every newly hired employee (regular, temporary, student etc.) must complete the Form I-9, including citizens and nationals of the United States. Both the employer (hiring department) and the employee are responsible for completing certain sections of the Form I-9.

4. **Who is responsible for completing the different sections of the Form I-9?**
   The employee is obligated to complete Section 1, Employee Information and Verification, of the Form I-9 no later than the first day of employment. Section 1 can be completed any time after the employee accepts the job offer but no later than the first day of employment. The employer is obligated, after physically examining the documents presented by the employee, to complete Section 2, Employer Review and Verification, and Section 3, Updating and Re-verification (if applicable), of the Form I-9. The completed Form I-9 and legible copies of verified documents must be submitted to Human Resource Services no later than the third business day of employment.

5. **Can the Form I-9 be filled out before the job is offered?**
   An individual should not complete a Form I-9 for an employer until after he or she has accepted the position. If the university has an individual complete the Form I-9 but no offer is extended and accepted, the university opens itself to the possibility of discrimination claims. This is due to the fact that the Form I-9 asks about citizenship and alienage, and it requires the production of documents that might indicate national origin.

6. **When should Section 1 be completed?**
   Section 1 of the Form I-9 must be completed and signed by every newly hired employee on or before the date of hire, regardless of his or her immigration status. The employee must attest that he or she is a U.S. citizen, lawful permanent resident, or is otherwise authorized to work for the employer in the United States. The employee must present the employer with documentation establishing identity and employment eligibility in accordance with the List of Acceptable Documents on the Form I-9.

7. **When should Section 2 be completed?**
   Section 2 of the Form I-9 must be completed and signed by every employer within three business days of the hire. If the employment relationship will last less than three days, then section two must be completed at the time of hire. Section two must be completed and signed by every employer whether he or she employs thousands of employees or only one. The employer must ask each
employee to provide documents that prove both his/her identity and his/her authorization to work. Employees must present original documents. Photocopies of documents cannot be accepted for Form I-9 purposes.

8. When should Section 3 be completed?
Employers should complete Section 3 of the Form I-9 when updating and re-verifying the employment authorization of an employee whose previous valid authorization has expired. Section 3 does not apply to employees who are U.S. citizens or permanent residents. Section 3 should only be completed when the employee denotes that he or she is an alien authorized to work until a date certain in Section 1 of the Form I-9. For example, when a USCIS-issued employment authorization document is scheduled to expire, the employer must re-verify that the employee has renewed his/her authorization to work and has a valid document from either List A or one from both List B and List C in his/her possession. Employers CANNOT specify which document(s) they will accept from an employee. Only the employee can choose the acceptable document(s) to provide. Original documents must be provided by the employee; photocopies are not acceptable for Form I-9 purposes.

In addition, Section 3 can also be completed when an employee is updating his/her information due to a name change or if the employee is rehired within two years of termination of prior employment and the personal information remains the same as on the previous Form I-9.

9. Can photocopies be accepted from the employee?
No, photocopies of documents cannot be accepted for Form I-9 purposes. Employees must present original documents for copying by the hiring department. The only exception is that a newly hired employee may present a certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal. Beginning October 31, 2010, only certified copies of Puerto Rico birth certificates issued on or after July 1, 2010, are acceptable for Form I-9 purposes.

10. What is the new portability provision for an H-1B visa holder?
These new portability provisions allow a nonimmigrant alien, who was previously issued an H-1B visa or who was otherwise accorded H-1B status, to begin working for a new H-1B employer as soon as the new employer files an H-1B petition for the alien, rather than having to wait for USCIS approval.

11. If I have filed a petition for an extension of status for my employee, can I continue employing him or her?
Immigration regulations authorize employment with the same employer for up to 240 days after a non-frivolous petition for extension of status is filed. The regulation limits the 240-day rule to the following non-immigrant visa classifications: A-3, E, G-5, H, I, J-1, L-1, O-1, O-2, P-1, P-2, P-3, R, and TN. Employment Services is responsible for completing or updating the Form I-9 for employees with an extended work authorization under these regulations.

12. How would an employer fulfill the Form I-9 verification requirement under the 240-day rule?
Immigration regulations authorize employment with the same employer for up to 240 days after a non-frivolous petition for extension of status is filed. While the employment is authorized, there is no provision on the Form I-9 for the documentation of this fact. Therefore, employers may want to follow whatever documentation procedures they use for the 240-day grace period. Employment Services will document this information on behalf of NMSU.
13. Does this new portability provision affect the way the university completes the Form I-9?
The Form I-9 contains no provision for this authorization. Employment Services has created a process for documenting this information. International employees using the portability provision should complete their Form I-9 with an Employment Services staff member.

14. Are there any exceptions to completing the Form I-9?
Yes. Independent contractors or those persons who were hired prior to November 6, 1986 are exempted from completing the Form I-9.

15. What documentation can an F-1 OPT student, who has filed either an H-1B petition or a STEM OPT extension, show to satisfy Form I-9 requirements?
An F-1 student who has timely filed Form I-765 for a 17-month STEM extension of his/her post-completion OPT, and whose EAD (Form I-766) has expired, is authorized to continue working while the Form I-765 application is pending for a period not to exceed 180 days. The following documents constitute the equivalent of an unexpired EAD under List A, # 4 of the Form I-9:

1. The expired Form I-766 EAD;
2. The USCIS receipt notice (Form I-797, Notice of Action) showing a timely filing of the Form I-765 extension application; and
3. Form I-20 updated to show that the DSO recommended the STEM extension for a work authorization period beginning on the date after the expiration of the EAD.

This combination of documents satisfies the Form I-9 document presentation requirements for 180 days (or less if the application is denied beforehand). If the 17-month STEM extension is approved, the student should receive a new Form I-766 EAD within the 180-day period.

F-1 OPT students who have filed an H-1B petition should have a “cap-gap” Form I-20 from their DSO which will show that the student’s employment authorization has been extended and the effective dates. The following documents constitute the equivalent of an unexpired EAD under List A, # 4 of the Form I-9:

1. The expired Form I-766 EAD;
2. A “cap-gap” Form I-20 endorsed to show that the student’s employment authorization is still valid; and
3. The USCIS receipt notice (Form I-797, Notice of Action) showing receipt of the H-1B petition.

This combination of documents satisfies the Form I-9 document presentation requirements until September 30th, or until the date of the denial of the H-1B petition. If the receipt notice has not yet been issued, the expired EAD and the “cap-gap” Form I-20 are sufficient. This combination of documents satisfies the Form I-9 until the expiration date noted on the “cap-gap” Form I-20, but not later than September 30th. If the student presents a “cap-gap” Form I-20 without a receipt notice, the employer must re-verify upon the expiration date noted on the I-20.