

117TH CONGRESS
1ST SESSION

S. 1759

To establish a MicroCap small business investment company designation,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 20, 2021

Mr. HICKENLOOPER (for himself and Mr. RISCH) introduced the following bill;
which was read twice and referred to the Committee on Small Business
and Entrepreneurship

A BILL

To establish a MicroCap small business investment company
designation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “MicroCap Small Busi-
5 ness Investing Act of 2021”.

6 **SEC. 2. MICROCAP SMALL BUSINESS INVESTMENT COM-**
7 **PANY DESIGNATION.**

8 (a) IN GENERAL.—Title III of the Small Business
9 Investment Act of 1958 (15 U.S.C. 681 et seq.) is amend-
10 ed—

1 (1) in section 301(c) (15 U.S.C. 681(c)), by
2 adding at the end the following:

3 “(5) MICROCAP SMALL BUSINESS INVESTMENT
4 COMPANY LICENSE.—

5 “(A) IN GENERAL.—Notwithstanding any
6 other provision of law, the Administrator may
7 approve an application and issue not more than
8 10 licenses annually under this subsection with
9 respect to any applicant—

10 “(i) that would otherwise be issued a
11 license under this subsection, except that
12 the management of the applicant does not
13 satisfy the qualification requirements
14 under paragraph (3)(A)(ii) to the extent
15 that such requirements relate to invest-
16 ment experience and track record, includ-
17 ing any such requirements further set
18 forth in section 107.305 of title 13, Code
19 of Federal Regulations, or any successor
20 regulation;

21 “(ii) for which the fund managers
22 have—

23 “(I) a documented record of suc-
24 cessful business experience;

1 “(II) a record of business man-
2 agement success; or

3 “(III) knowledge in the par-
4 ticular industry or business in which
5 the investment strategy is being pur-
6 sued; and

7 “(iii) that, in addition to any other re-
8 quirement applicable to the applicant
9 under this title or the rules issued to carry
10 out this title (including section
11 121.301(c)(2) of title 13, Code of Federal
12 Regulations, or any successor regulation),
13 will make not less than 25 percent of its
14 investments in—

15 “(I) low-income communities, as
16 that term is defined in section 45D(e)
17 of the Internal Revenue Code of 1986;

18 “(II) a community that has been
19 designated as a qualified opportunity
20 zone under section 1400Z-1 of the In-
21 ternal Revenue Code of 1986;

22 “(III) businesses primarily en-
23 gaged in research and development;

24 “(IV) manufacturers;

1 “(V) businesses primarily owned
2 or controlled by individuals in under-
3 served communities before receiving
4 capital from the applicant; and

5 “(VI) rural areas, as that term is
6 defined by the Bureau of the Census.

7 “(B) PRIORITY; STREAMLINED PROCESS.—
8 With respect to an application for a license pur-
9 suant to this paragraph, the Administrator
10 shall—

11 “(i) give priority to an applicant for
12 such a license that is located in an under-
13 licensed State; and

14 “(ii) establish a streamlined process
15 for applicants submitting such an applica-
16 tion.

17 “(C) TIMING FOR ISSUANCE OF LI-
18 CENSE.—Notwithstanding paragraph (2), with
19 respect to an application for a license submitted
20 to the Administrator pursuant to this para-
21 graph, the Administrator shall—

22 “(i) not later than 60 days after the
23 date on which the application is submitted
24 to the Administrator, process and provide
25 complete feedback with respect to any pre-

1 license application requirements applicable
2 to the applicant;

3 “(ii) not restrict the submission of
4 any application materials; and

5 “(iii) not later than 90 days after the
6 date on which the application is submitted
7 to the Administrator—

8 “(I) approve the application and
9 issue a license for such operation to
10 the applicant, if the requirements for
11 the license are satisfied; or

12 “(II) based upon facts in the
13 record—

14 “(aa) disapprove the appli-
15 cation; and

16 “(bb) provide the applicant
17 with—

18 “(AA) a clear, written
19 explanation of the reason for
20 the disapproval; and

21 “(BB) a chance to rem-
22 edy any issues with the ap-
23 plication and immediately
24 reapply, with technical as-
25 sistance provided as needed

1 and a new determination
 2 made by the Administrator
 3 not later than 30 days after
 4 the date on which the appli-
 5 cant re-submits the applica-
 6 tion.

7 “(D) LEVERAGE.—A company licensed
 8 pursuant to this paragraph shall—

9 “(i) not be eligible to receive leverage
 10 in an amount that is more than
 11 \$25,000,000; and

12 “(ii) access leverage in an amount
 13 that is not more than 100 percent of the
 14 private capital of the applicant.

15 “(E) INVESTMENT COMMITTEE.—

16 “(i) IN GENERAL.—Each company li-
 17 censed pursuant to this paragraph shall
 18 have not fewer than 2 independent mem-
 19 bers on the investment committee of the
 20 company in a manner that complies with
 21 the following requirements:

22 “(I) The independent members of
 23 the investment committee are or have
 24 been licensed managers of small busi-

1 ness investment companies within the
2 preceding 10-year period.

3 “(II) No small business invest-
4 ment company described in subclause
5 (I) may adversely affected by the rela-
6 tionship of the independent members
7 of the investment committee with the
8 company licensed pursuant to this
9 paragraph.

10 “(III) The independent members
11 of the investment committee are re-
12 quired to approve each investment
13 made by the company.

14 “(IV) The independent members
15 of the investment committee shall not
16 be paid a management fee, but may
17 receive paid expenses and a portion of
18 any carried interest.

19 “(ii) LEVERAGE LIMITS.—Any lever-
20 age associated with a company licensed
21 pursuant to this paragraph shall not be
22 counted toward the leverage limits of the
23 independent members of the investment
24 committee of the company under this
25 title.”; and

1 (2) in section 303(d) (15 U.S.C. 683(d)), by in-
2 serting “(or, with respect to a company licensed
3 under section 301(c)(5), 50 percent)” after “25 per-
4 cent”.

5 (b) SBA REQUIREMENTS.—

6 (1) DEFINITIONS.—In this subsection—

7 (A) the term “Administrator” means the
8 Administrator of the Small Business Adminis-
9 tration; and

10 (B) the term “covered company” means an
11 entity that is licensed to operate as a small
12 business investment company pursuant to para-
13 graph (5) of section 301(c) of the Small Busi-
14 ness Investment Act of 1958 (15 U.S.C.
15 681(c)), as added by subsection (a).

16 (2) RULES.—Not later than 90 days after the
17 date of enactment of this Act, the Administrator
18 shall issue rules to carry out this section and the
19 amendments made by this section.

20 (3) ANNUAL REPORT.—Not later than 1 year
21 after the date of enactment of this Act, and annually
22 thereafter, the Administrator shall publicly publish a
23 report that details, for the year covered by the re-
24 port—

1 (A) the number of covered companies li-
2 censed by the Administrator;

3 (B) the industries in which covered compa-
4 nies have invested;

5 (C) the geographic locations of covered
6 companies; and

7 (D) the aggregate performance of covered
8 companies.

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