To assist entrepreneurs, support development of the creative economy, and encourage international cultural exchange, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 2017

Mrs. Dingell introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Small Business, Transportation and Infrastructure, the Judiciary, Education and the Workforce, Financial Services, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To assist entrepreneurs, support development of the creative economy, and encourage international cultural exchange, 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; TABLE OF CONTENTS.
4 (a) Short Title.—This Act may be cited as the “Comprehensive Resources for Entrepreneurs in the Arts to Transform the Economy Act of 2017” or the “CRE-ATE Act of 2017”.
(b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—SUPPORT FOR ARTISTS AND ENTREPRENEURS

Sec. 101. Charitable contributions of certain items created by the taxpayer.
Sec. 102. Microloan program expansion.
Sec. 103. SBA business loans for the creative economy.
Sec. 104. SBA technical assistance programs.
Sec. 105. Arts-focused economic development.
Sec. 106. Arts-focused rural development.
Sec. 107. International participation in the arts.
Sec. 108. Disaster support for artists through FEMA.

TITLE II—SUPPORT FOR THE CREATIVE ECONOMY

Sec. 201. Modification of rules for charitable contributions of fractional gifts.
Sec. 202. Capital gains tax rate relating to art.

TITLE III—CREATIVE COMMUNITY DEVELOPMENT

Sec. 301. Artist corps.
Sec. 302. Community development entities focused on the arts for purposes of the new markets tax credit.
Sec. 303. Demonstration program on support of local programs that promote creative and performance arts in local economic planning.

3  TITLE I—SUPPORT FOR ARTISTS AND ENTREPRENEURS

5 SEC. 101. CHARITABLE CONTRIBUTIONS OF CERTAIN
6 ITEMS CREATED BY THE TAXPAYER.

7  (a) In General.—Subsection (e) of section 170 of
8 the Internal Revenue Code of 1986 is amended by adding
9 at the end the following new paragraph:
10
11  ""(8) Special rule for certain contributions of literary, musical, or artistic compositions.—"
12
13  ""(A) In General.—In the case of a qualified artistic charitable contribution—"
“(i) the amount of such contribution shall be the fair market value of the property contributed (determined at the time of such contribution), and

“(ii) no reduction in the amount of such contribution shall be made under paragraph (1).

“(B) QUALIFIED ARTISTIC CHARITABLE CONTRIBUTION.—For purposes of this paragraph, the term ‘qualified artistic charitable contribution’ means a charitable contribution of any literary, musical, artistic, or scholarly composition, or similar property, or the copyright thereon (or both), but only if—

“(i) such property was created by the personal efforts of the taxpayer making such contribution no less than 18 months prior to such contribution,

“(ii) the taxpayer—

“(I) has received a qualified appraisal of the fair market value of such property in accordance with the regulations under this section, and

“(II) attaches to the taxpayer’s income tax return for the taxable year
in which such contribution was made
a copy of such appraisal,
“(iii) the donee is an organization de-
dscribed in subsection (b)(1)(A),
“(iv) the use of such property by the
donee is related to the purpose or function
constituting the basis for the donee’s ex-
emption under section 501 (or, in the case
of a governmental unit, to any purpose or
function described under subsection (c)),
“(v) the taxpayer receives from the
donee a written statement representing
that the donee’s use of the property will be
in accordance with the provisions of clause
(iv), and
“(vi) the written appraisal referred to
in clause (ii) includes evidence of the ex-
tent (if any) to which property created by
the personal efforts of the taxpayer and of
the same type as the donated property is
or has been—
“(I) owned, maintained, and dis-
played by organizations described in
subsection (b)(1)(A), and
“(II) sold to or exchanged by persons other than the taxpayer, donee, or any related person (as defined in section 465(b)(3)(C)).

“(C) Maximum dollar limitation; no carryover of increased deduction.—The increase in the deduction under this section by reason of this paragraph for any taxable year—

“(i) shall not exceed the artistic adjusted gross income of the taxpayer for such taxable year, and

“(ii) shall not be taken into account in determining the amount which may be carried from such taxable year under subsection (d).

“(D) Artistic adjusted gross income.—For purposes of this paragraph, the term ‘artistic adjusted gross income’ means that portion of the adjusted gross income of the taxpayer for the taxable year attributable to—

“(i) income from the sale or use of property created by the personal efforts of the taxpayer which is of the same type as the donated property, and
“(ii) income from teaching, lecturing, performing, or similar activity with respect to property described in clause (i).

“(E) PARAGRAPH NOT TO APPLY TO CERTAIN CONTRIBUTIONS.—Subparagraph (A) shall not apply to any charitable contribution of any letter, memorandum, or similar property which was written, prepared, or produced by or for an individual while the individual is an officer or employee of any person (including any government agency or instrumentality) unless such letter, memorandum, or similar property is entirely personal.

“(F) COPYRIGHT TREATED AS SEPARATE PROPERTY FOR PARTIAL INTEREST RULE.—In the case of a qualified artistic charitable contribution, the tangible literary, musical, artistic, or scholarly composition, or similar property and the copyright on such work shall be treated as separate properties for purposes of this paragraph and subsection (f)(3).”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after the date of the enactment of this Act in taxable years ending after such date.
SEC. 102. MICROLOAN PROGRAM EXPANSION.

Section 7(m)(6) of the Small Business Act (15 U.S.C. 636(m)(6)) is amended by adding at the end the following:

“(F) LOAN CRITERIA FOR ARTISTS AND ARTS ENTREPRENEURS.—The Administration, in consultation with eligible intermediaries, shall develop loan criteria to ensure that small business concerns owned and controlled by artists and small business concerns that support the creative economy receive loan proceeds under this subsection.”.

SEC. 103. SBA BUSINESS LOANS FOR THE CREATIVE ECONOMY.

Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end the following:

“(35) CREATIVE ECONOMY.—In providing assistance under this subsection, the Administration shall develop procedures to evaluate the business proposals and business plans of small business concerns that focus on economic development, job creation, and community growth with respect to the creative economy.”.

SEC. 104. SBA TECHNICAL ASSISTANCE PROGRAMS.

Section 21 of the Small Business Act (15 U.S.C. 648) is amended by adding at the end the following:
“(o) Technical Assistance Programs for Artists and Arts Entrepreneurs.—The Administration, in consultation with relevant stakeholders, shall develop technical assistance programs to be carried out by small business development centers under this subsection that target the specific needs of artists and arts entrepreneurs.”.

SEC. 105. ARTS-FOCUSED ECONOMIC DEVELOPMENT.

Title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.) is amended by adding at the end the following:

“SEC. 219. ARTS-FOCUSED ECONOMIC DEVELOPMENT.

“(a) Definitions.—In this section:

“(1) Business incubation program.—The term ‘business incubation program’ means a program that—

“(A) accelerates the successful development of entrepreneurial businesses through business support resources and services, developed or orchestrated by incubator management;

“(B) is designed to produce successful businesses; and

“(C) provides management guidance, technical assistance, and consulting designed for
young, growing businesses, including by providing—

“(i) rental space and flexible leases;
“(ii) shared basic business services and equipment;
“(iii) technology support services; and
“(iv) assistance in obtaining financing necessary for growth of the business.

“(2) INCUBATOR.—The term ‘incubator’ means a multitenant facility with on-site management that directs a business incubation program.

“(b) ARTS-FOCUSED ECONOMIC DEVELOPMENT.—In providing grants and assistance under this Act (including through the local technical assistance, partnership planning, and comprehensive economic development strategies programs of the Economic Development Administration), the Secretary shall provide to artists and the creative economy support through traditional economic development tools, including—

“(1) incubators; and
“(2) economic development planning and technical assistance.”.
SEC. 106. ARTS-FOCUSED RURAL DEVELOPMENT.

The Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) is amended by adding at the end the following:

“Subtitle J—Arts-Focused Economic Development

SEC. 386A. ARTS-FOCUSED ECONOMIC DEVELOPMENT.

“(a) DEFINITIONS.—In this section:

“(1) BUSINESS INCUBATION PROGRAM.—The term ‘business incubation program’ means a program that—

“(A) accelerates the successful development of entrepreneurial businesses through business support resources and services, developed or orchestrated by incubator management;

“(B) is designed to produce successful businesses; and

“(C) provides management guidance, technical assistance, and consulting designed for young, growing businesses, including by providing—

“(i) rental space and flexible leases;

“(ii) shared basic business services and equipment;

“(iii) technology support services; and
“(iv) assistance in obtaining financing necessary for growth of the business.

“(2) INCUBATOR.—The term ‘incubator’ means a multitenant facility with on-site management that directs a business incubation program.

“(b) ARTS-FOCUSED ECONOMIC DEVELOPMENT.—In providing grants and assistance under this Act (including through the local technical assistance, partnership planning, and comprehensive economic development strategies programs of the Office of Rural Development), the Secretary, acting through the Under Secretary for Rural Development, shall provide to artists and the creative economy support through traditional economic development tools, including—

“(1) incubators; and

“(2) economic development planning and technical assistance.”.

SEC. 107. INTERNATIONAL PARTICIPATION IN THE ARTS.

Section 214(c)(6)(D) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(6)(D)) is amended—

(1) in the first sentence, by inserting ““(i)” before “Any person”;

(2) in the second sentence—

(A) by striking “Once” and inserting “Except as provided in clause (ii), once”; and
(B) by striking “Attorney General shall” and inserting “Secretary of Homeland Security shall”;

(3) in the third sentence, by striking “The Attorney General” and inserting “The Secretary”; and

(4) by adding at the end the following:

“(ii) The Secretary of Homeland Security shall adjudicate each petition for an alien with extraordinary ability in the arts (as described in section 101(a)(15)(O)(i)), an alien accompanying such an alien (as described in section 101(a)(15)(O)(ii)), or an alien described in section 101(a)(15)(P) (other than an alien described in section 214(c)(4)(A) (relating to athletes)) not later than 14 days after—

“(I) the date on which the petitioner submits the petition with a written advisory opinion, letter of no objection, or request for a waiver; or

“(II) the date on which the 15-day period described in clause (i) has expired, if the petitioner has had an opportunity to supply rebuttal evidence.

“(iii) If a petition described in clause (ii) is not adjudicated by the end of the 14-day period described in clause (ii) and the petitioner is an arts organization described in paragraph (3), (5), or (6) of section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under
section 501(a) of such Code for the taxable year preceding
the calendar year in which the petition is submitted, or
an individual or entity petitioning primarily on behalf of
such an organization, the Secretary of Homeland Security
shall provide the petitioner with the premium-processing
services referred to in section 286(u), without a fee.”.

SEC. 108. DISASTER SUPPORT FOR ARTISTS THROUGH
FEMA.

(a) IN GENERAL.—The President, acting through the
Administrator of the Federal Emergency Management
Agency, shall promulgate rules to ensure that expenses in-
curred, as a result of a major disaster or emergency, by
a self-employed or freelance worker, including a craft art-
ist, fine artist, designer, literary artist, performing artist,
or musician, to repair or replace tools needed by the self-
employed or freelance worker are considered eligible ex-
penses for assistance under section 408 of the Robert T.
Stafford Disaster Relief and Emergency Assistance Act
(42 U.S.C. 5174).

(b) REQUIREMENT.—The rules promulgated under
subsection (a) may not require, as a condition of receiving
such assistance under section 408 of the Robert T. Staff-
ford Disaster Relief and Emergency Assistance Act (42
U.S.C. 5174), an applicant—
(1) to apply or be declined for assistance from
the Small Business Administration; or
(2) to demonstrate that assistance received
from the Small Business Administration does not
satisfy the total necessary expenses or serious needs
arising out of a major disaster or emergency.

**TITLE II—SUPPORT FOR THE**
**CREATIVE ECONOMY**

**SEC. 201. MODIFICATION OF RULES FOR CHARITABLE CONTRIBU-
TIONS OF FRACTIONAL GIFTS.**

(a) Income Tax.—

(1) Additional requirements for deduction.—Paragraph (1) of section 170(o) of the Internal Revenue Code of 1986 is amended to read as fol-
lows:

“(1) Denial of deduction in certain
cases.—

“(A) In general.—No deduction shall be allowed for a contribution of an undivided por-
tion of a taxpayer’s entire interest in tangible
personal property unless—

“(i) all interests in the property are
held immediately before such contribution
by—

“(I) the taxpayer, or
“(II) the taxpayer and the donee,

“(ii) in the case of an initial fractional contribution, such contribution is an undivided portion of not less than 10 percent of all interests in the property,

“(iii) in the case of an initial fractional contribution, the contribution is made pursuant to a written binding contract which requires the donor—

“(I) to contribute not less than 20 percent of all interests in the property on or before the date that is 11 years after the date of the initial fractional contribution, and

“(II) to contribute all of the interests in such property to the donee (or if such donee is no longer in existence, to any person described in subsection (c)) on or before the earlier of the date of the death of the donor or the date which is 20 years after the date of the initial fractional contribution, and

“(iv) if the value of the tangible personal property with respect to which the
undivided portion of the taxpayer's entire interest relates is greater than $1,000,000 (or such greater amount as determined by the Secretary), the taxpayer attaches to the return for the taxable year in which such contribution is made a statement of value obtained from the Internal Revenue Service.

In the case of a donor who dies before the date which is 20 years after the date of the initial fractional contribution, clause (iii)(II) is satisfied with respect to such initial fractional contribution if the donor’s will specifies that all of the interests in such property will be contributed to the donee before such date.

“(B) EXCEPTIONS.—The Secretary may, by regulation, provide for exceptions to subparagraph (A)(i) in cases where all persons who hold an interest in the property make proportional contributions of an undivided portion of the entire interest held by such persons. Such regulations may modify the requirements of clauses (ii) and (iii) of subparagraph (A) to the extent necessary to carry out the purposes of this subparagraph.”.
(2) Valuation of Subsequent Gifts.—Paragraph (2) of section 170(o) of such Code is amended to read as follows:

“(2) Valuation of Subsequent Gifts.—In the case of any additional contribution, the fair market value of such contribution shall be determined by using a certified appraisal from the Art Advisory Panel of the Commissioner of Internal Revenue.”.

(3) Recapture of Deduction.—Paragraph (3) of section 170(o) of such Code is amended—

(A) by redesignating subparagraph (B) as subparagraph (C), and

(B) by striking subparagraph (A) and inserting the following:

“(A) Recapture.—The Secretary shall provide for the recapture of the amount of any deduction allowed under this section (plus interest) with respect to any contribution of an undivided portion of a taxpayer's entire interest in tangible personal property—

“(i) in any case in which the donor fails to meet the requirements described in paragraph (1)(A)(iii), and

“(ii) in any case where such property is not in the physical possession of the
donee (other than in the case of art which
is fragile or unwieldy) and used in a use
which is related to a purpose or function
constituting the basis for the donee organi-
zation’s exemption under section 501 dur-
ing any applicable period for a period of
time which bears substantially the same
ratio to 5 years as—

“(I) the percentage of the undi-
vided interest of the donee in the
property (determined on the day after
such contribution was made), bears to

“(II) 100 percent.

“(B) APPLICABLE PERIOD.—For purposes
of subparagraph (A), the applicable period
means—

“(i) the 5-year period beginning on
the date of the later of the initial fractional
contribution, and

“(ii) each subsequent 5-year period
occurring during the 20-year period de-
scribed in paragraph (1)(A)(iii)(II).”.

(b) GIFT TAX.—

(1) ADDITIONAL REQUIREMENTS FOR DEDUC-
TION.—Paragraph (1) of section 2522(e) of the In-
ternal Revenue Code of 1986 is amended to read as follows:

“(1) **Denial of Deduction in Certain Cases.**—

“(A) **In General.**—No deduction shall be allowed for a contribution of an undivided portion of a taxpayer’s entire interest in tangible personal property unless—

“(i) all interests in the property are held immediately before such contribution by—

“(I) the taxpayer, or

“(II) the taxpayer and the donee,

“(ii) in the case of an initial fractional contribution, such contribution is an undivided portion of not less than 10 percent of all interests in the property,

“(iii) in the case of an initial fractional contribution, the contribution is made pursuant to a written binding contract which requires the donor—

“(I) to contribute not less than 20 percent of all interests in the property on or before the date that is 11
years after the date of the initial fractional contribution, and

“(II) to contribute all of the interests in such property to the donee (or if such donee is no longer in existence, to any person described in subsection (e)) on or before the earlier of the date of the death of the donor or the date which is 20 years after the date of the initial fractional contribution, and

“(iv) if the value of the tangible personal property with respect to which the undivided portion of the taxpayer’s entire interest relates is greater than $1,000,000 (or such greater amount as determined by the Secretary), the taxpayer attaches to the return for the taxable year in which such contribution is made a statement of value obtained from the Internal Revenue Service.

In the case of a donor who dies before the date which is 20 years after the date of the initial fractional contribution, clause (iii)(II) is satisfied with respect to such initial fractional con-
tribution if the donor’s will specifies that all of
the interests in such property will be contrib-
uted to the donee before such date.

“(B) EXCEPTIONS.—The Secretary may,
by regulation, provide for exceptions to sub-
paragraph (A)(i) in cases where all persons who
hold an interest in the property make propor-
tional contributions of an undivided portion of
the entire interest held by such persons. Such
regulations may modify the requirements of
clauses (ii) and (iii) of subparagraph (A) to the
extent necessary to carry out the purposes of
this subparagraph.”.

(2) RECAPTURE OF DEDUCTION.—Paragraph
(2) of section 2522(e) of such Code is amended—

(A) by redesignating subparagraphs (B)
and (C) as subparagraphs (C) and (D), respec-
tively, and

(B) by striking subparagraph (A) and in-
serting the following:

“(A) RECAPTURE.—The Secretary shall
provide for the recapture of the amount of any
deduction allowed under this section (plus inter-
est) with respect to any contribution of an undi-
vided portion of a taxpayer’s entire interest in tangible personal property—

“(i) in any case in which the donor fails to meet the requirements described in paragraph (1)(A)(iii), and

“(ii) in any case where such property is not in the physical possession of the donee (other than in the case of art which is fragile or unwieldy) and used in a use which is related to a purpose or function constituting the basis for the donee organization’s exemption under section 501 during any applicable period for a period of time which bears substantially the same ratio to 5 years as—

“(I) the percentage of the undivided interest of the donee in the property (determined on the day after such contribution was made), bears to

“(II) 100 percent.

“(B) APPLICABLE PERIOD.—For purposes of subparagraph (A), the applicable period means—
“(i) the 5-year period beginning on
the date of the later of the initial fractional
contribution, and
“(ii) each subsequent 5-year period
occurring during the 20-year period de-
scribed in paragraph (1)(A)(iii)(II).”.

(e) Effective Date.—The amendments made by
this section shall apply to contributions and gifts made
after the date of the enactment of this Act.

(d) Transition Rule.—In the case of any addi-
tional contribution (as defined in section 170(o)(4) of the
Internal Revenue Code of 1986) with respect to an initial
fractional contribution (as defined in such section) made
after August 17, 2006, and before the date of the enact-
ment of this Act—

(1) except for purposes of determining the fair
market value of such contribution under section
170(o)(2) of the Internal Revenue Code of 1986 (as
amended by this Act), such contribution shall be
treated as an initial fractional contribution (as so
defined) subject to the amendments made by this
section, and
(2) sections 170(o)(3)(A)(i) and
2522(e)(3)(A)(i) of such Code (as in effect before
the date of the enactment of this Act) shall not
apply with respect to any prior contribution of an undivided portion of the taxpayer’s interest in the property.

SEC. 202. CAPITAL GAINS TAX RATE RELATING TO ART.

(a) EXCLUSION FROM 28-PERCENT RATE GAIN.—Subparagraph (A) of section 1(h)(5) of the Internal Revenue Code of 1986 is amended by striking “paragraph (3)” and inserting “paragraph (2)(A) or (3)”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

TITLE III—CREATIVE COMMUNITY DEVELOPMENT

SEC. 301. ARTIST CORPS.

(a) CORPS.—Section 122(a) of the National and Community Service Act of 1990 (42 U.S.C. 12572(a)) is amended by adding at the end the following:

“(6) ARTIST CORPS.—

“(A) IN GENERAL.—The recipient may carry out national service programs through an Artist Corps that identifies and meets unmet needs within communities through artistic activities such as those described in subparagraph (B) and improves performance on the indicators described in subparagraph (C).
“(B) ACTIVITIES.—An Artist Corps described in this paragraph may carry out activities such as—

“(i) providing skilled visual and performance artists to address community needs through artistic activities in education, health care, and therapeutic settings, and in other settings in the community; or

“(ii) providing other artistic activities, addressing unmet community needs, that the Corporation may designate, such as technical assistance for grant writing, marketing, and financial planning.

“(C) ARTIST CORPS INDICATORS.—The indicators for a corps program described in this paragraph are—

“(i) any indicator relating to meeting critical needs that the Corporation establishes; or

“(ii) any local indicator (applicable to a particular recipient or community and on which an improvement in performance is needed) relating to meeting critical needs,
that is approved by the Corporation or a State Commission.”.

(b) CONFORMING AMENDMENTS.—Section 122 of such Act is amended—

(1) in subsection (b)(3), by striking “or (5)” and inserting “(5), or (6)”; and

(2) in subsection (c)(1), in the matter preceding subparagraph (A), by striking “through (5)” and inserting “through (6)”.

SEC. 302. COMMUNITY DEVELOPMENT ENTITIES FOCUSED ON THE ARTS FOR PURPOSES OF THE NEW MARKETS TAX CREDIT.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall develop and promulgate guidelines for the creation and operation of qualified community development entities—

(1) which will be eligible to be certified as such by the Secretary of the Treasury under section 45D(e)(1)(C) of the Internal Revenue Code of 1986;

(2) a qualified equity investment in which will, subject to allocation under section 45D(f) of such Code, be eligible for the credit under such section 45D; and
27

(3) which will focus on investment in and the
development and encouragement of the creative
economy in low-income communities.

(b) DEFINITIONS.—For purposes of this section, any
term used in subsection (a) which is also used in section
45D of the Internal Revenue Code of 1986 has the same
meaning as when used in such section.

SEC. 303. DEMONSTRATION PROGRAM ON SUPPORT OF
LOCAL PROGRAMS THAT PROMOTE CREATIVE AND PERFORMANCE ARTS IN LOCAL
ECONOMIC PLANNING.

(a) DEMONSTRATION PROGRAM REQUIRED.—The
Secretary of Commerce shall establish a demonstration
program to assess the feasibility and advisability of pro-
viding support to covered programs to promote creative
and performing arts in the economic planning of local gov-
ernments.

(b) COVERED PROGRAMS.—For purposes of the dem-
onstration program required by subsection (a), a covered
program is any program that—

(1) was in effect on the day before the date of
the enactment of this Act; and

(2) the Secretary considers part of an art com-
munity.