Dear Chairmen Hatch and Brady and Ranking Members Wyden and Neal:

The undersigned organizations and companies urge you to correct at the earliest possible opportunity a drafting error in recently-enacted H.R. 1 (the Tax Cuts and Jobs Act or “Act”). While we greatly appreciate efforts to simplify the tax code and alleviate tax burdens on American businesses and families, this particular error in the overall tax reform effort is unintentionally stifling investment, job creation, and other important economic and community benefits.

The Act aimed to spur investment in upgrades and improvements to commercial properties by making qualified improvement property or “QIP” (generally, improvements to the interior of existing nonresidential buildings) eligible for accelerated bonus depreciation and subject to a 15-year depreciation recovery period. This policy, which we applaud, is consistent with years of bipartisan efforts to encourage such investments.

The text of the final bill, however, mistakenly failed to assign QIP a 15-year Modified Accelerated Cost Recovery System (“MACRS”) recovery period. As a result of this pure drafting error, QIP (including retail, restaurant and leasehold improvements) no longer qualifies for bonus depreciation and defaults to a MACRS recovery period of 39 years, rather than 15 years.1

It is evident this was a pure drafting error. The Joint Explanatory Statement accompanying the final legislative text says that the Act assigned “a general 15-year MACRS recovery period for qualified improvement property” and the bill was scored as if the 15-year assignment were

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1 Due to another, related drafting error, the Act’s provision purporting to assign a 20-year Alternative Depreciation System (“ADS”) recovery period for QIP references a Code section that does not exist. As a result, for businesses electing out of the MACRS system, this property now defaults to a 40-year ADS recovery period—a period far longer than the actual useful life of QIP.
This error is also among the few provisions in the Act identified by the Joint Committee on Taxation as needing a true “technical correction.”

As the law stands now, businesses investing in upgrades are worse off from a cash flow and tax exposure perspective than they were pre-tax reform (when 40 percent bonus depreciation would have applied to all QIP, and restaurant, retail and leasehold properties would have had a 15-year recovery period). To put this into perspective, in 2018, instead of being able to write off 100 percent of these investments under the Act’s accelerated bonus depreciation provisions or roughly 47 percent under pre-tax reform law, businesses are only able to write off 2.5 percent this year and then depreciate the remainder over the next 38 years.

This error is already slowing investments in QIP and commercial renovation projects—the opposite of lawmakers’ longstanding and laudable goal to grow such investments and fuel related economic activity. It also is causing numerous ripple effects, including on sales of QIP products, job creation, property values, building occupancy and rental income, cost-saving energy efficiency gains, and even on fire safety. These unintended negative consequences flowing from the error will only be exacerbated the longer the error persists. Specific examples of such consequences include, among others:

- Significant cash flow disruptions for businesses—especially small businesses and franchisees (who are often obligated to remodel on a particular schedule)—that have already planned and committed to substantial renovation projects, which may result in these businesses having to make trade-offs in other areas such as hiring and employee pay/benefits;

- Delays in store and restaurant remodeling projects and, by extension, a negative impact on these businesses’ ability to attract customers and compete with newer market entrants; moreover, this creates safety concerns because, in some cases, installations of sprinkler systems also are delayed (creating a more perilous situation in the case of fire);

- Loss of construction jobs associated with commercial renovation projects;

- Businesses refraining from purchasing or leasing vacant stores or other leasehold spaces that require improvements, which means foregoing permanent jobs that would be generated with new businesses moving in and other benefits of revitalizing our communities;

- Hampering of building owners’ ability to offer “improvement dollars” in their lease terms to retain existing commercial tenants or attract new tenants;

- Declining sales for QIP product suppliers (e.g., lighting and other improvements), including high-quality products manufactured in the U.S.; and

- Less investment in energy-efficient QIP products, which save businesses substantial costs in the long term (as much as 50-90 percent through upgraded lighting and controls alone) and reduce energy consumption.
Every day a fix is delayed means foregoing significant investment in QIP and a loss of related economic activity and other benefits to our communities. Correcting this drafting error is a top priority for each of us. We respectfully request that you take action at the earliest possible opportunity to help our businesses and industries that are being negatively impacted with respect to commercial improvements and QIP investments.

Thank you for your continued support of American businesses and families. We look forward to working together to address this specific challenge as soon as possible.

Sincerely,

Abercrombie & Fitch Co.
Acuity Brands, Inc.
Advance Auto Parts, Inc.
Air-Conditioning, Heating, and Refrigeration Institute
Alaska Cabaret, Hotel, Restaurant and Retailers Association
Anna Maria Oyster Bar
Apple Gold Group
Arkansas Hospitality Association
Associated Builders and Contractors
Associated General Contractors of America
Association of Kentucky Fried Chicken Franchisees (AKFCF)
Belle Restaurant Group Inc.
Big Lots Stores, Inc.
Biscuitville
Bloomin’ Brands, Inc.
Building Owners and Managers Association (BOMA) International
Cameron Mitchell Restaurants
Cannery Row Company
Classic Restaurant Concepts
Coalition of Franchisee Associations
Conn’s Hospitality Group
Del Frisco’s Restaurant Group
Eaton
Elmer’s Restaurants, Inc.
Express, Inc.
Flaherty's Seafood Grill & Oyster Bar
Food Marketing Institute
Franchise Business Services
Frontier Enterprises
GameStop Corp.
Gecko’s Hospitality Group, LLC
Golden Corral Corporation
Griffin Tavern, Inc.
Gunter Hans
Gusto Pizza Co.
Halls on the River INC
Hinckley Management Group
Horseshoe Grille
IKEA North America Services, Inc.
Illuminating Engineering Society
International Association of Fire Chiefs
International Association of Lighting Designers
J.C. Penney Company, Inc.
La Familia Cortez Restaurants
La Posta Group Inc
Landreman Family Restaurant
LWD Inc. dba McDonald's
Lynnwood Grill & Brewing Co.
Marcellino Ristorante
MGM International
MJB Pizza Inc. dba Barro’s Pizza
National Association of Convenience Stores
National Automobile Dealers Association
National Electrical Manufacturers Association
National Fire Sprinkler Association
National Franchisee Association
National Grocers Association
National Restaurant Association
National Retail Federation
New Hampshire Lodging & Restaurant Association
New Jersey Restaurant and Hospitality Association
North Carolina Restaurant & Lodging Association
North Country Brewing Co.
Petroleum Marketers Association of America
Pizza Hut of Arizona, Inc.
Ralph Brennan Restaurant Group
Red Lobster Seafood Co.
Red Robin Gourmet Burgers and Brews
Red Rock Resorts
Retail Industry Leaders Association
Rocky Rococo Restaurants
Rosati’s Pizza
Shadowbrook Restaurant
Signify (formerly Philips Lighting)
South Dakota Retailers Association
Streets of New York
Taco John’s International, INC.
The Aquitaine Group
The Fuel Counter Ltd.
The Wendy’s Company
Westaco and Mas Bells, dba Taco Bell
Wildflower Bread Company
Wintzell’s Oyster House
Wolfgang Puck Worldwide, Inc.
Young's Jersey Dairy

cc: Members of the U.S. Senate
    Members of the U.S. House of Representatives