



**11<sup>th</sup> Annual Mid-South Agricultural & Environmental Law Conference – “Early Bird”**

# Ag Land Title, Transparency Requirements, Foreign Ownership, & Related Issues

Elise Alexander, VP & General Counsel, AcreTrader  
Ben Maddox, VP of Business Development, AcreTrader  
Harrison M. Pittman, Director, National Agricultural Law Center

# Overview of Foreign Ownership in Mid-South: Legislative and Legal Update



# Foreign Ownership in U.S. Farmland

- Agricultural Foreign Investment Disclosure Act (“AFIDA”) of 1978
- Requires a “foreign person” to report ag landholdings (and leases 10+ years) to USDA
- Latest official data is through December 31, 2022
- Foreign ownership in private ag land: 43,418,141 (3.4% of all private ag land)
  - Almost +3.4 million acre from Dec. 31, 2021
  - 2012 – 2022: Appx. +17.3 million acre (+66%)
  - 48.3% forestland
  - 28.3% cropland
  - 21.3% pasture/other ag



# Foreign Ownership in U.S. Farmland

- Top countries of foreign investments?
  - Canada (32%)
  - Netherlands (12%)
  - Italy & UK (6%)
  - Germany (5%)

China reports 0.9% ownership interest in ag and non-ag land  
States with most foreign held ag land acres?

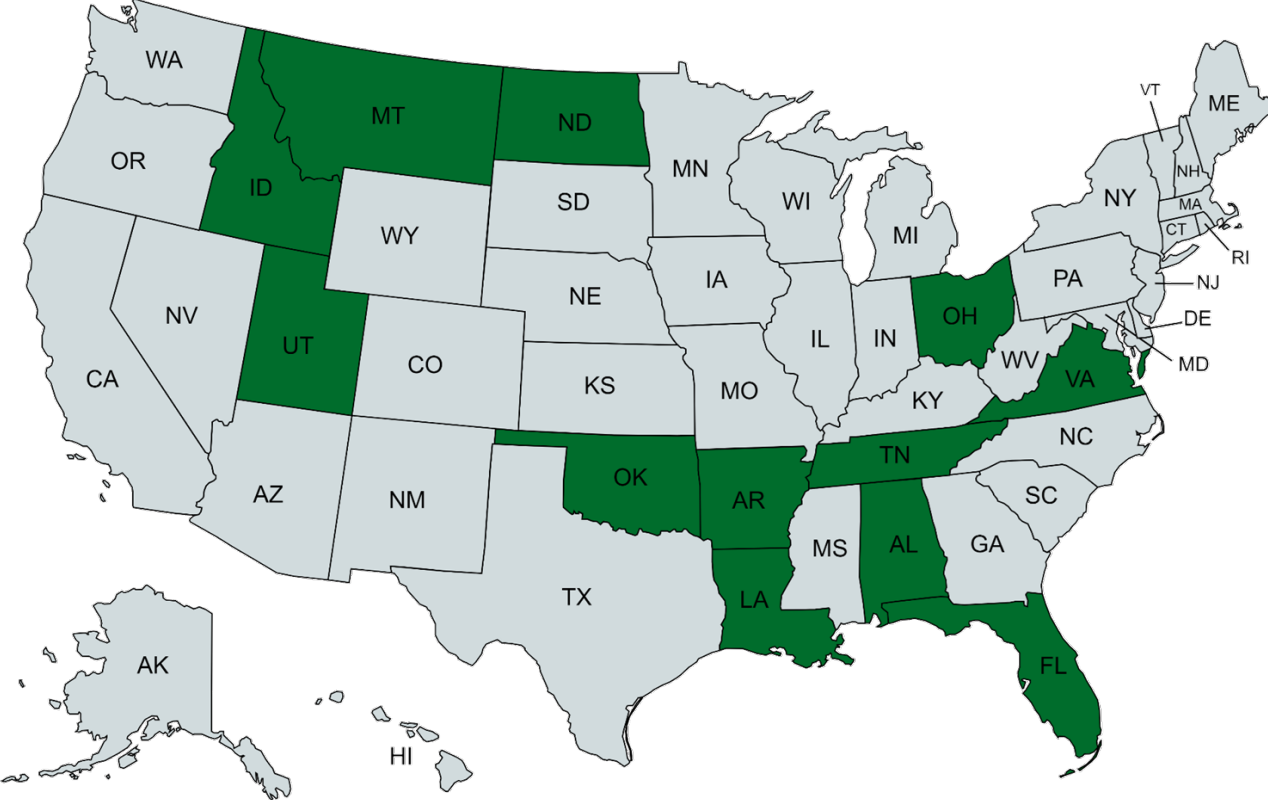
1. Texas (5.4 million) (+168,053 in 2022)
2. Maine (3.49 million) (-126,534 in 2022)
3. Colorado (2.47 million) (+557,209 in 2022)
4. Alabama (2.3 million) (+514,440 in 2022)
5. Michigan (1.84 million) (+461,364 in 2022)

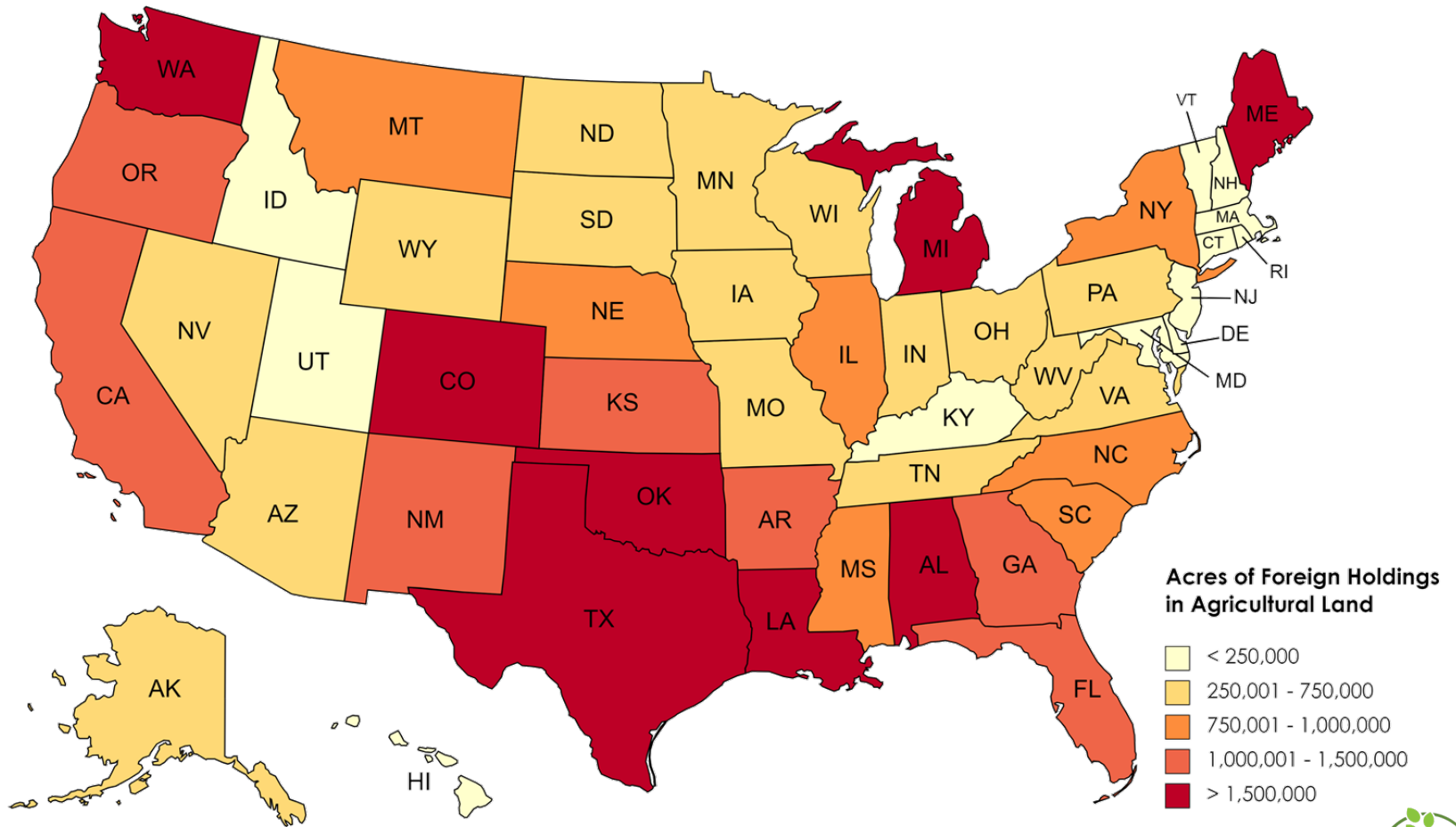






# 2023 Foreign Ownership Laws: Enacted







# Federal Proposals

118<sup>th</sup> Congress has considered several measures that seek to control, prohibit, restrict, or increase oversight on foreign investments in U.S. agriculture

## Categories:

1. Restrict Chinese investments in U.S. ag land
2. Restrict multiple foreign countries from investing in U.S. ag land
3. Restrict investments in all U.S. real property
4. Restrict through other methods
5. Amend AFIDA
6. Prevent foreign participation in farm programs
7. Adding USDA as a member of CFIUS



# “Traditional” Foreign Ownership Laws (Pre-2023)

- “[A] **foreign business entity** may not acquire by grant, purchase, devise, descent, or otherwise any **agricultural land** located within Indiana for the purpose of crop farming or timber production.” (Ind. Code Ann. § 32-22-3-4(a))
- “[N]onresident aliens shall not hereafter acquire or hold **land**....” (Miss. Code Ann. § 89-1-23)
- “No **alien**, who is not a resident of this state, ...and no **foreign government** shall hereafter acquire **agricultural lands**, or any interest therein, exceeding one hundred sixty acres....” (S.D. Codified Laws § 43-2A-2)
- “[N]o **foreign [entity]** may...own, acquire, or otherwise obtain an interest...to **real estate used for farming** or capable of being used for farming in this state.” (S.D. Codified Laws § 47-9A-3)
- “An **alien**, who is not a resident of a state or territory of the United States..., and a **foreign government** shall not acquire an interest in **agricultural land**, exceeding 100 acres....” (68 Pa. Stat. Ann. § 41)



# 2023 Enacted Foreign Ownership Laws

## *Alabama – HB 379*

- Restricts **governments** and **political parties** of China, Iran, North Korea, and Russia (“Big 4”) from acquiring **agricultural land**

## *Arkansas – SB 383*

- Restricts a “prohibited foreign party” (**individual**, **entity**, and **gov’t** of countries subject to **International Traffic in Arms Regulations**) from acquiring ag land
- Restricts “prohibited foreign-party-controlled business” from acquiring **real property**
- Criminal liability for violations
- Office of Agricultural Intelligence
- Enforcement action against Syngenta

## *Florida – SB 264*

- Restricts **individual**, **entity**, and **gov’t** of Big 4 from acquiring **ag land**
- Restricts Chinese gov’t, entities, and individuals from acquiring **real property**
- Criminal liability for violations
- *Shen v. Simpson*, No. 4:23-cv-208 (N.D. Fla. 2023)



# 2023 Enacted Foreign Ownership Laws

## *Louisiana – HB 537*

- Restricts “**foreign adversary**” from acquiring **real property**  
“Foreign adversary” determined by U.S. Secretary of Commerce under [15 C.F.R. § 7.4\(a\)](#)

## *Tennessee – HB 40/SB 122*

- Restricts individual, entity, and gov’t of country on U.S. Treasury Department’s **sanctions program list** from acquiring **real property**

## *Georgia – SB 420*

## *Mississippi – SB 2519*

## *Virginia – SB 1438/HB 2325*

- Restricts “foreign adversary” from acquiring any interest in **ag land**



# Recent State Developments

- Arkansas' Enforcement Action
  - Enforcement action against Syngenta
  - Required to divest interest in 2 years or AG may bring legal action
- *Shen v. Simpson* (lawsuit challenging Florida's 2023 FOL)
  - District court denied preliminary injunction b/c law based on where a purchaser is domiciled rather than on race/ancestry (thus rational basis applies and the law overcomes this test)
  - Not preempted by federal law b/c CFIUS jurisdiction is limited/does not extend to all property
  - 11<sup>th</sup> Cir. issued preliminary injunction for two *Shen* plaintiffs on Feb. 1
    - Preempted by federal law (specifically, FIRRMA which extended CFIUS jurisdiction to real property)
- Missouri Executive Order 24-01



# Corporate Transparency Act of 2021:



More info from  
NALC partner:

IOWA STATE  
UNIVERSITY  
Center for  
Agricultural Law  
& Taxation



The National  
Agricultural Law  
Center

- Why:
  - Regulations implementing the Corporate Transparency Act of 2021; goal: prevent money laundering/tax evasion
  - Written/implemented by United States Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN")
- What:
  - Corps/LLCs/LLP/LP/other businesses formed with the Sec of State must file a timely/accurate report with FinCEN\*
    - \*Unless excluded. No exclusion for ag/small businesses
  - Report will include:
    - Company identifying details
    - Personal identifying details of all "beneficial owners"
  - Beneficial owners include:
    - Indiv who own/control at least 25% of reporting company OR
    - Indiv who directly/indirectly exercises substantial control over a reporting company
      - ~~President/CEO/CFO/manager/general counsel etc~~
- When:
  - *Companies created before 1/1/24*: Before 1/1/25
  - *Companies created during 2024*: 90 days after formation
    - Also must report "company applicants"
  - *Companies created after 1/1/25*: 30 days after formation
  - *Update subsequent changes*: 30 days after change
- Potential consequences for non-compliance (false info or failure to report):
  - < \$500 for each day in violation, max \$10k
  - < 2 years imprisonment



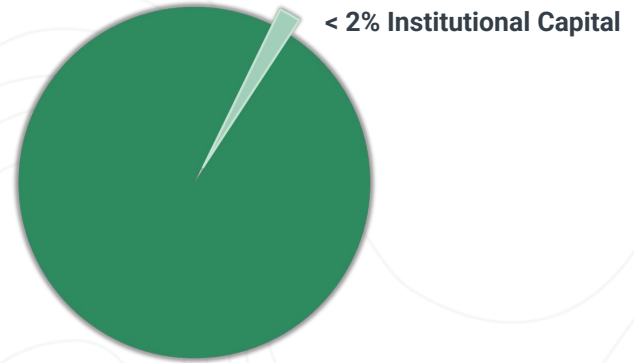
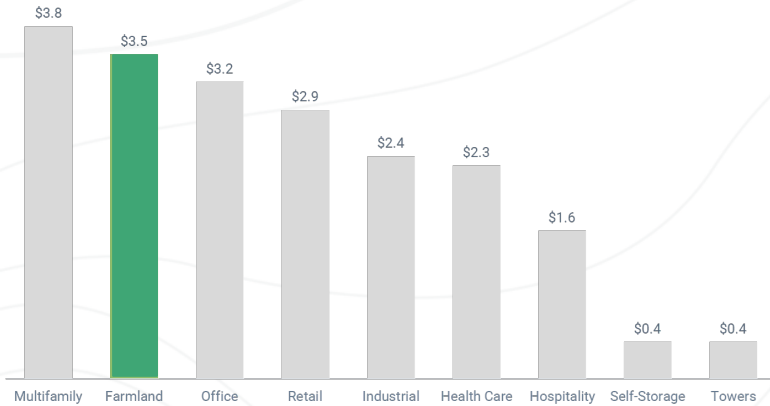
# Who Owns US Farmland?

Mid-south Agricultural & Environmental Law  
Conference

May 2024

# Farmland is an Large Market of Uncorrelated Assets

Values of Commercial Property Types  
(\$ Trillions)



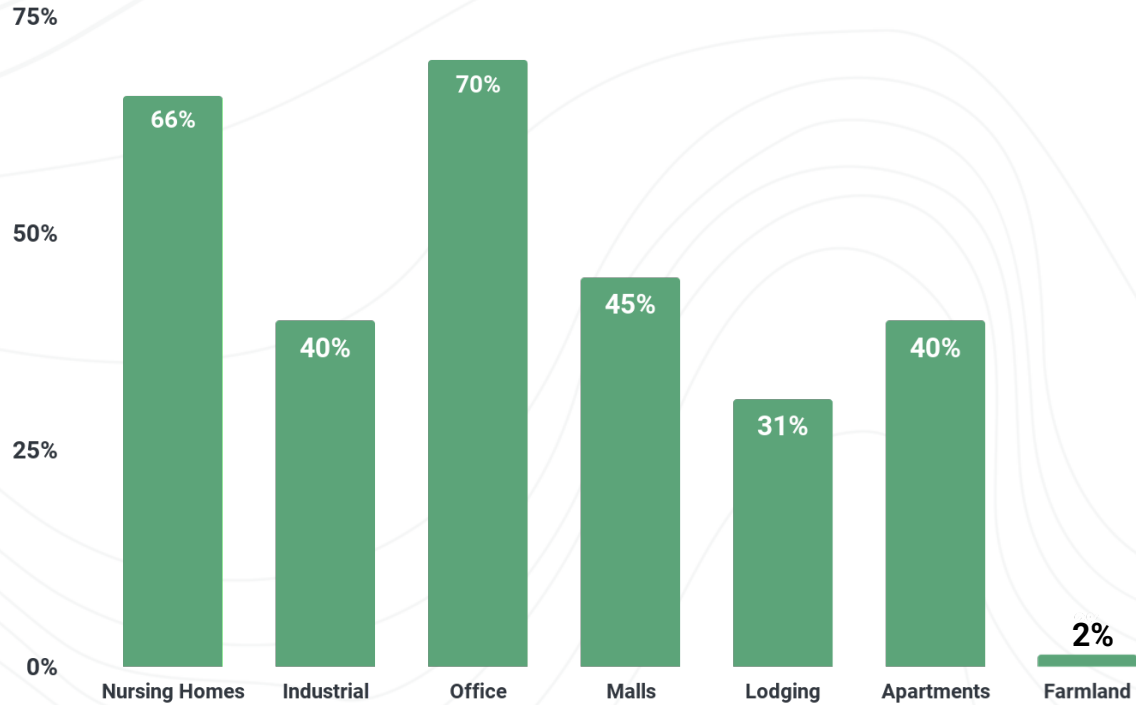
Farmland can offer capital growth through development and asset optimization that is typically associated with real estate and private equity.

Only \$40bn of institutional capital in the asset class vs. \$14bn 10 years ago. This presents a large opportunity for early adopters in a fragmented asset class.

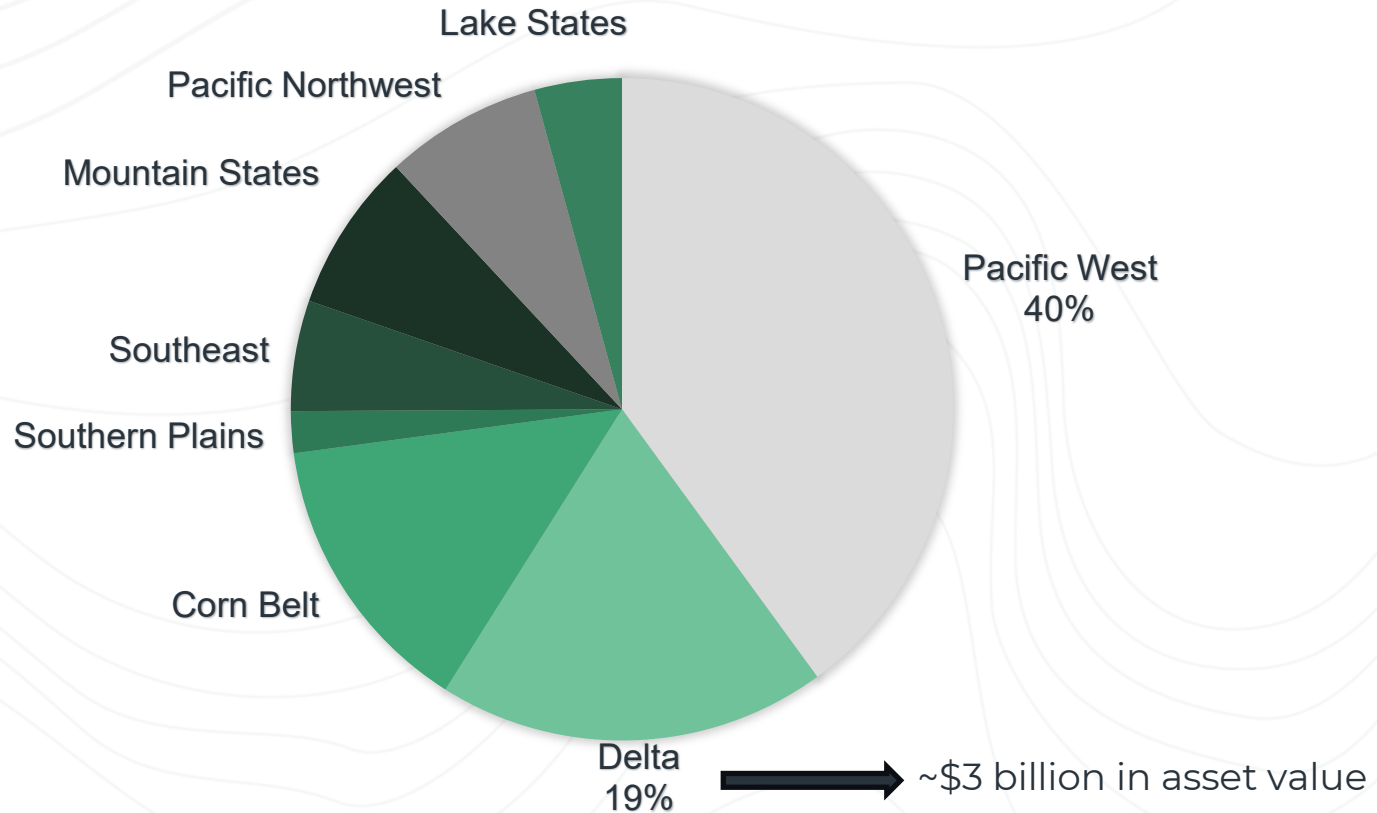




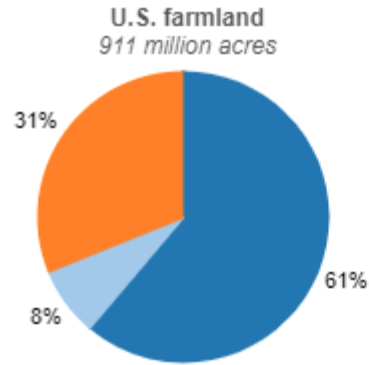
# Institutional Ownership of Various RE Asset Classes



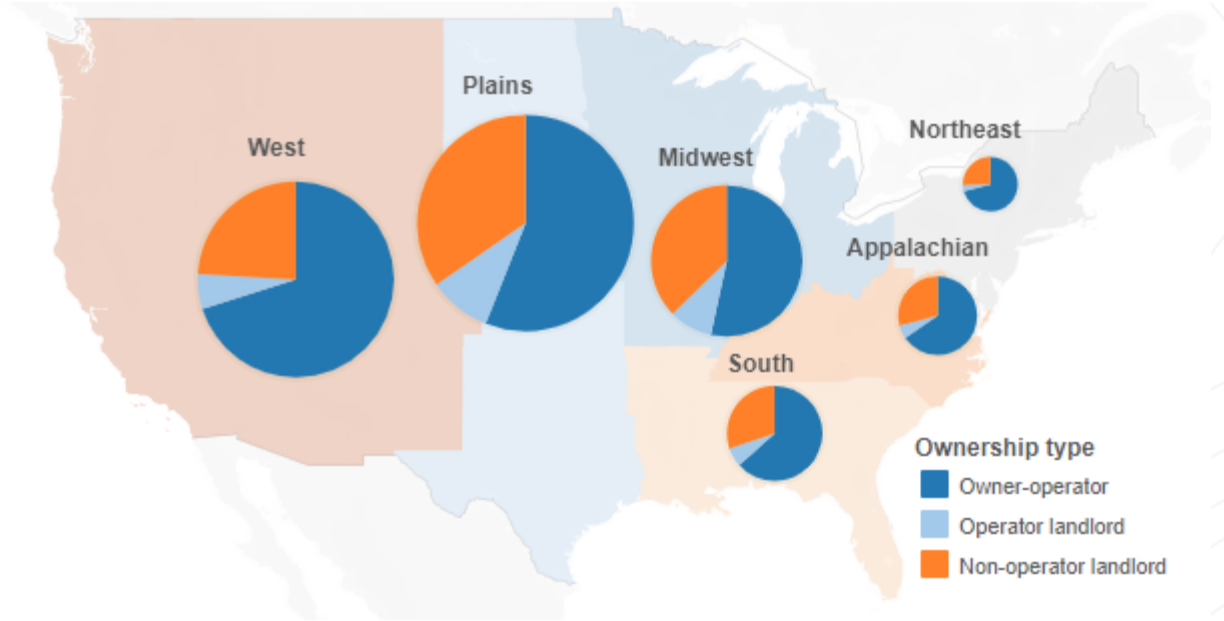
# NCREIF Institutional Farmland Index Composition



# Farmland Ownership by Operator or Non-Operator



**61 percent** of U.S. farmland is owner-operated, or owned by its respective farm operator. **Eighty percent** of rented land (**31 percent** of all farmland) is owned by non-operator landlords.



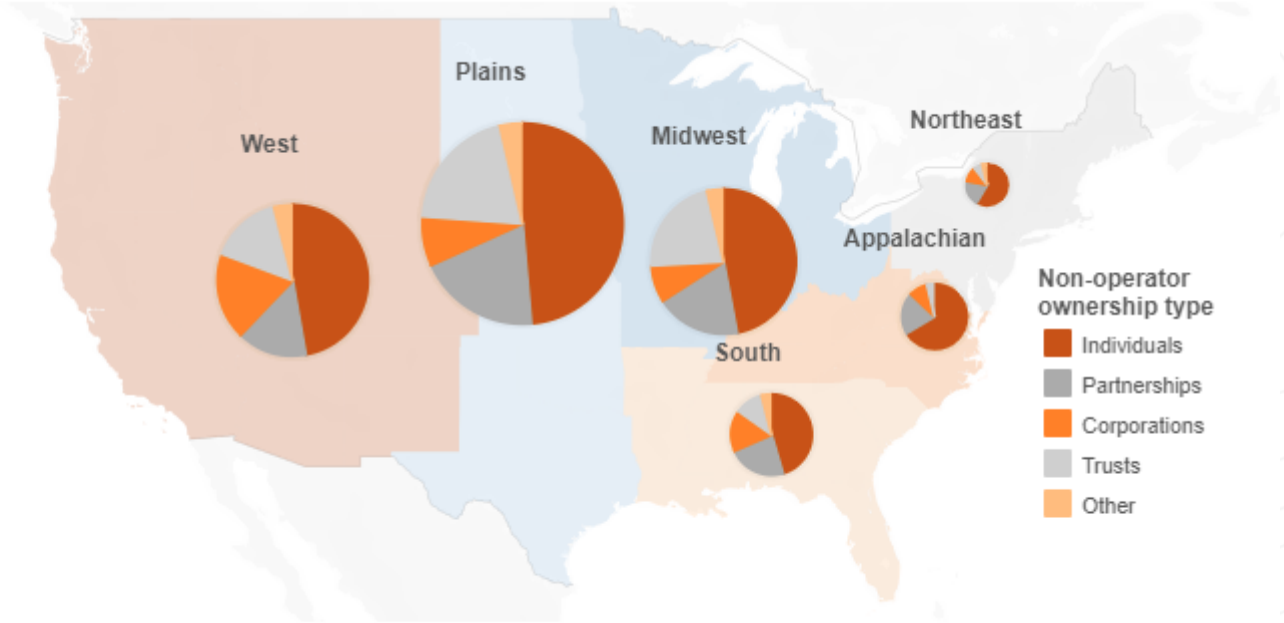
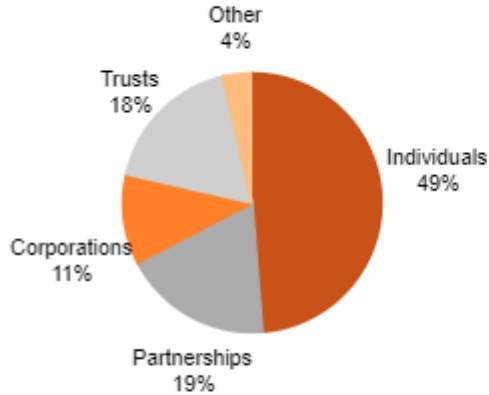
Note: Survey data on farmland ownership is available for the United States and 6 regions; summary statistics do not include Alaska and Hawaii. Rented land includes land that is subleased.

**69% of all U.S. farmland is owned by operators**



# Farmland Ownership by Non-Operators

U.S. non-operator owned farmland  
283 million acres

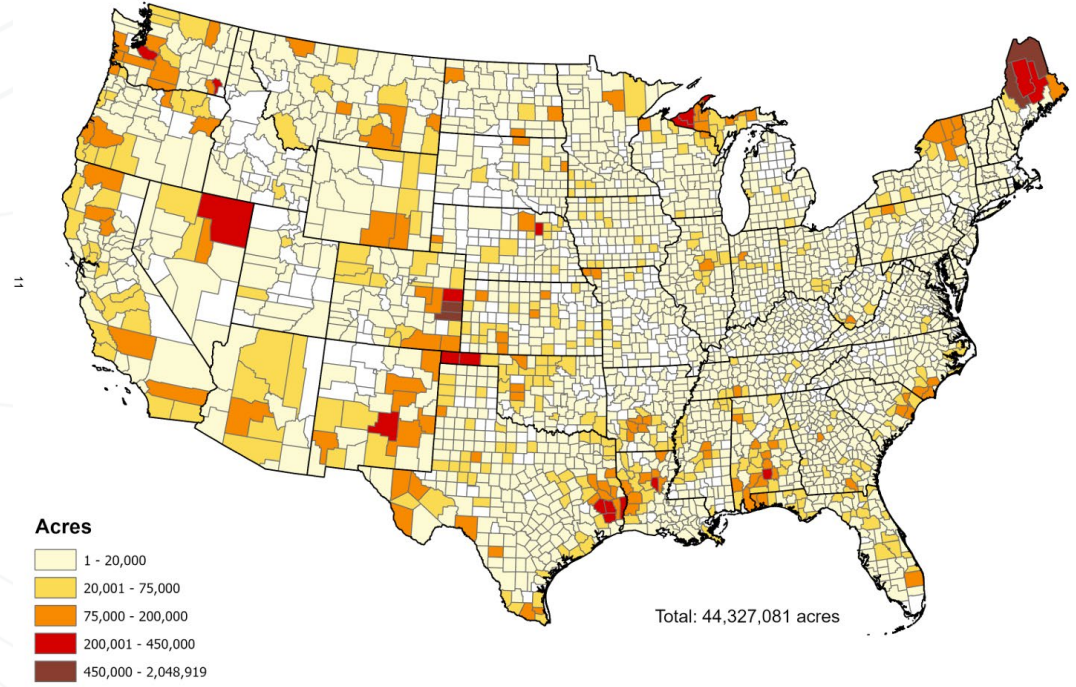


Note: Survey data on non-operator landlord ownership is available for the United States and 6 regions; summary statistics do not include Alaska and Hawaii. For the Appalachian region, "corporations" and "other" categories are combined to preserve survey respondent confidentiality. For the West region, the "partnerships" estimate based on TOTAL survey data has a large margin of error and should be interpreted with caution.

**9% of all U.S. farmland is owned by non-operator corporations or partnerships**

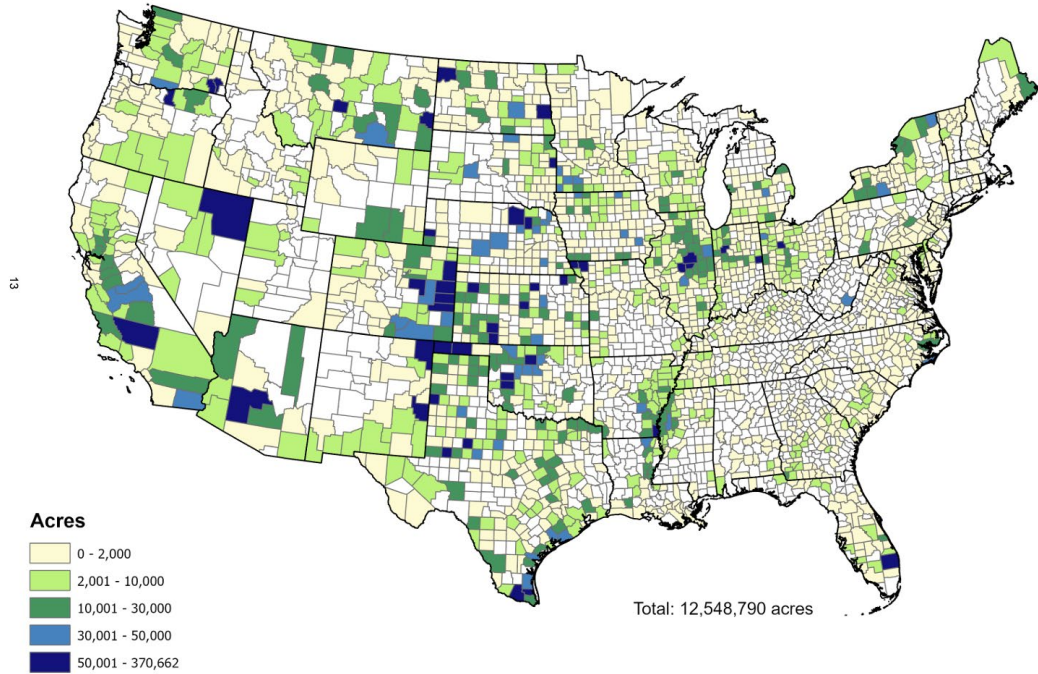


# Foreign Ownership of U.S. Ag & Non-Ag Land



**Foreign holdings of U.S. agricultural and non-agricultural land total 44.3 million acres**

# Foreign Ownership of U.S. Cropland

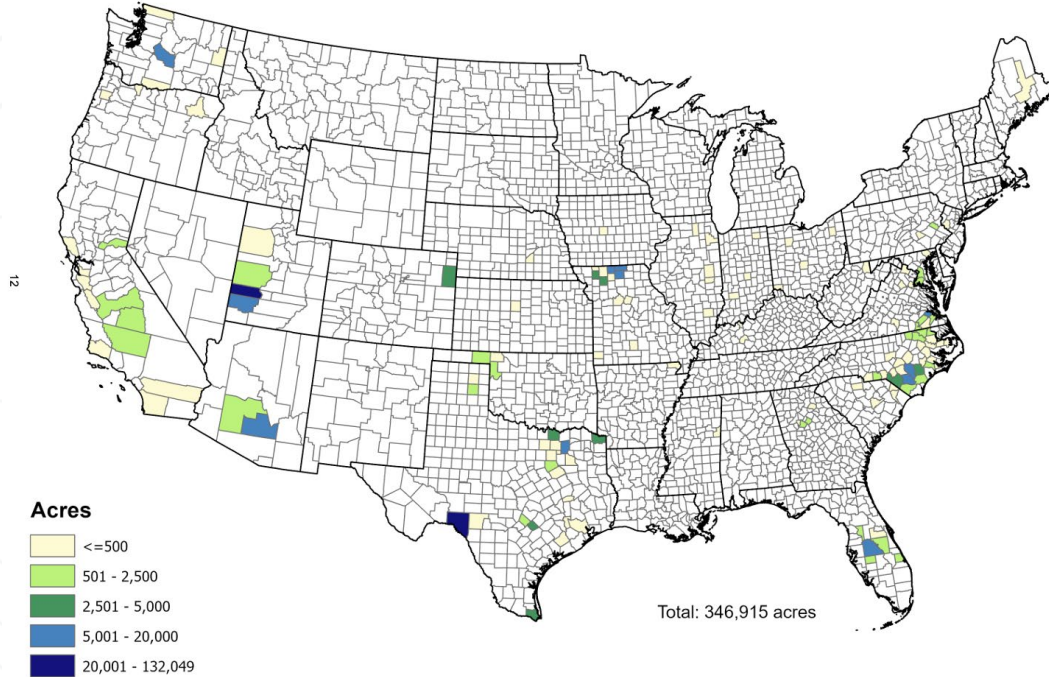


Foreign holdings of U.S. cropland represents 3.3% of total cropland





# Chinese Ownership of U.S. Ag and Non-Ag Land



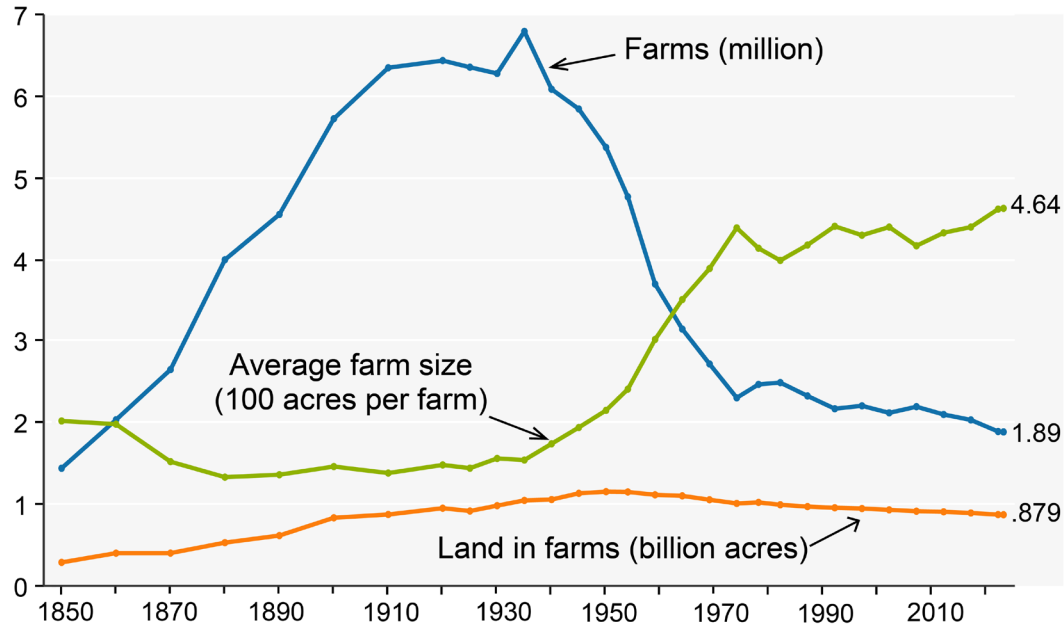
Chinese holdings of U.S. ag and non-ag lands total approx. 347,000 acres



# Farmland Trends

## Farms, land in farms, and average acres per farm, 1850–2023

Million farms, billion acres, or 100 acres per farm



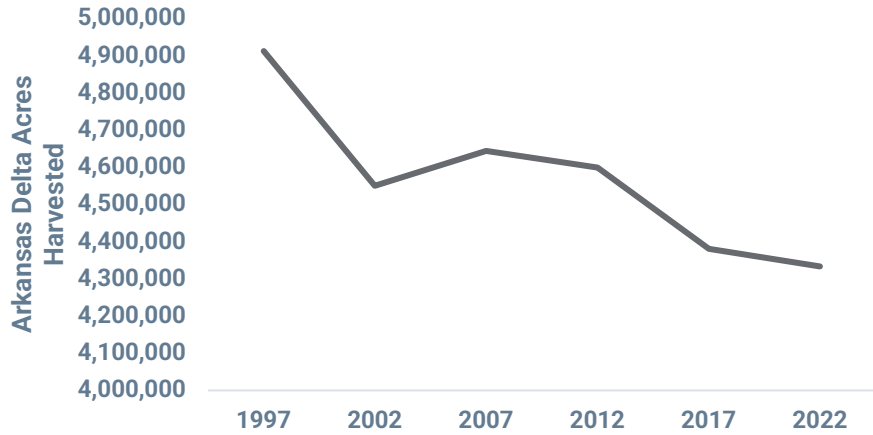
Three clear trends:

1. Cropland acres are steadily decreasing.
2. The number of farms are steadily decreasing.
3. The average farm size is steadily increasing.

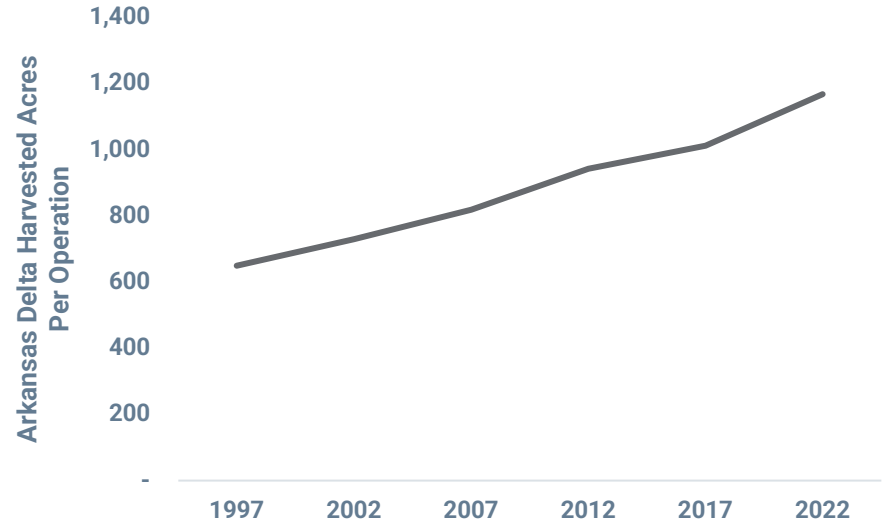
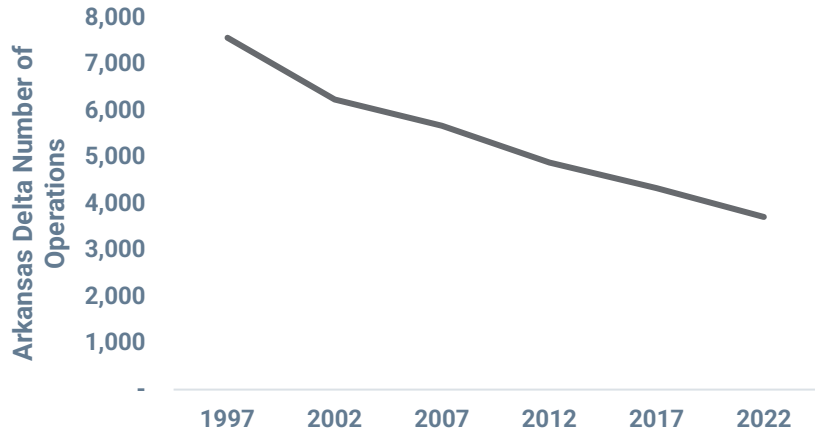
Source: USDA, Economic Research Service using data from USDA, National Agricultural Statistics Service, Census of Agriculture (through 2022) and *Farms and Land in Farms: 2023 Summary* (February 2024).







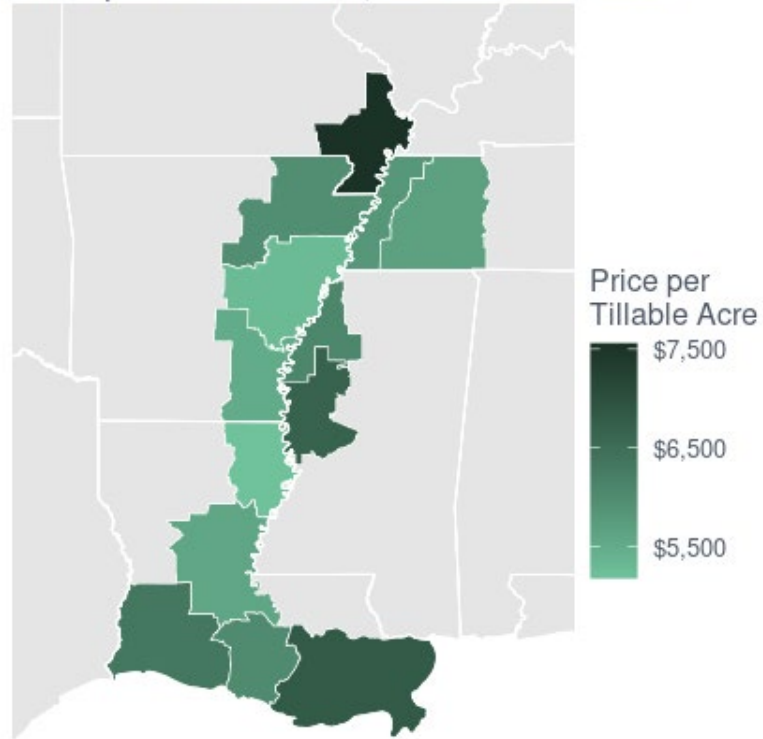
**Arkansas farms are becoming fewer and larger, following national trends**



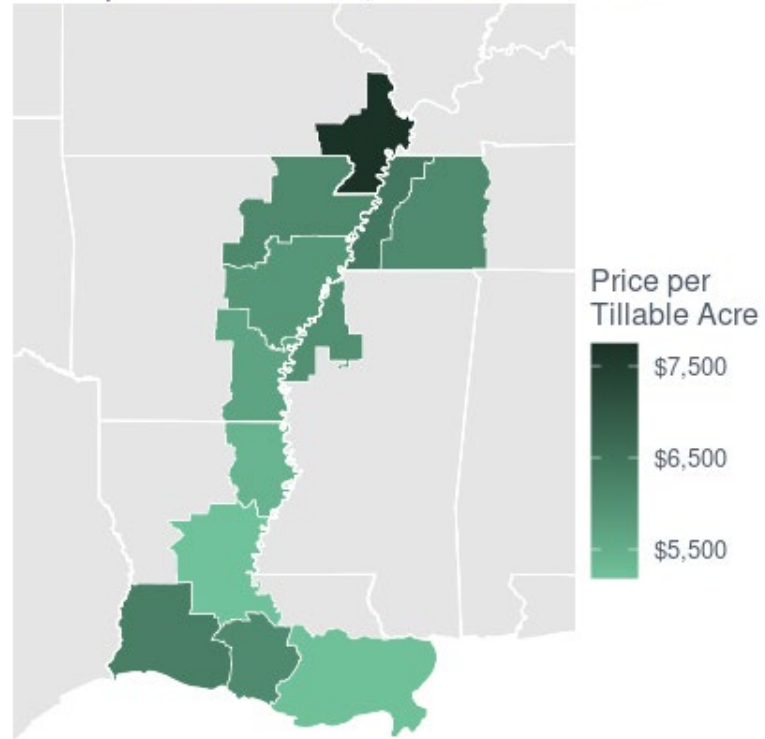


# Mid-South Farmland Values

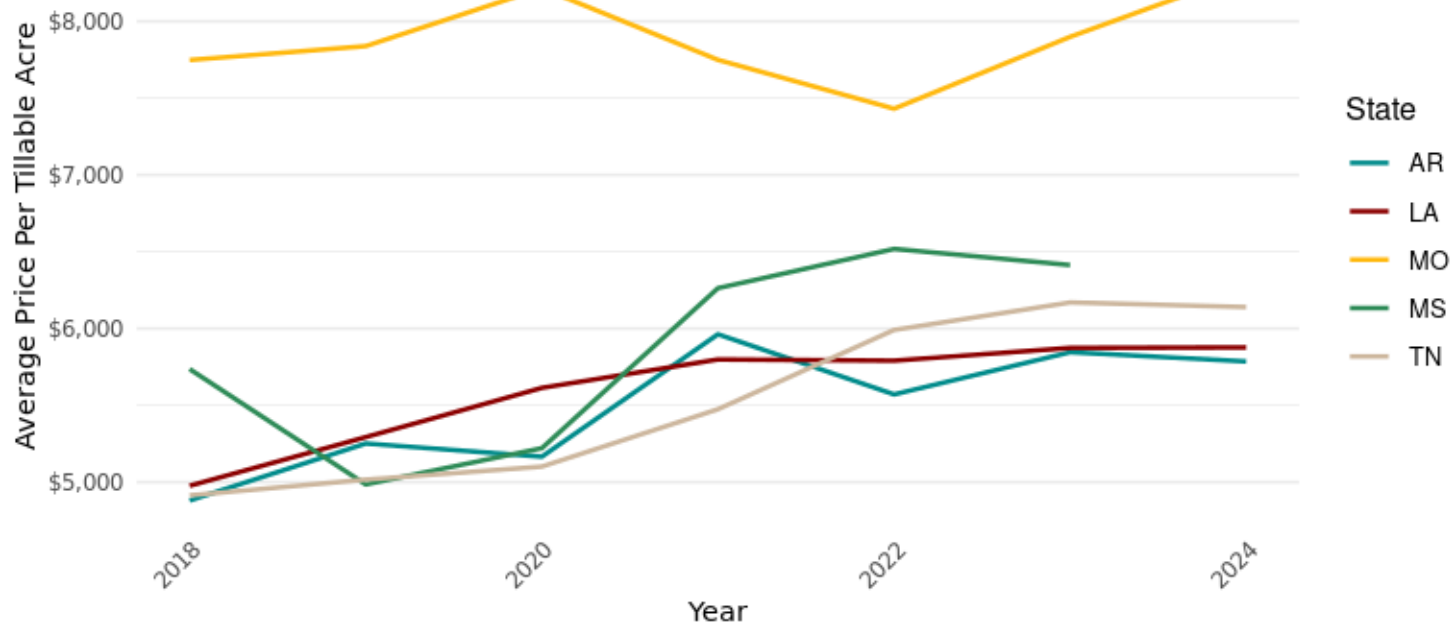
Price per Tillable Acre, Q2 2021-Q1 2022



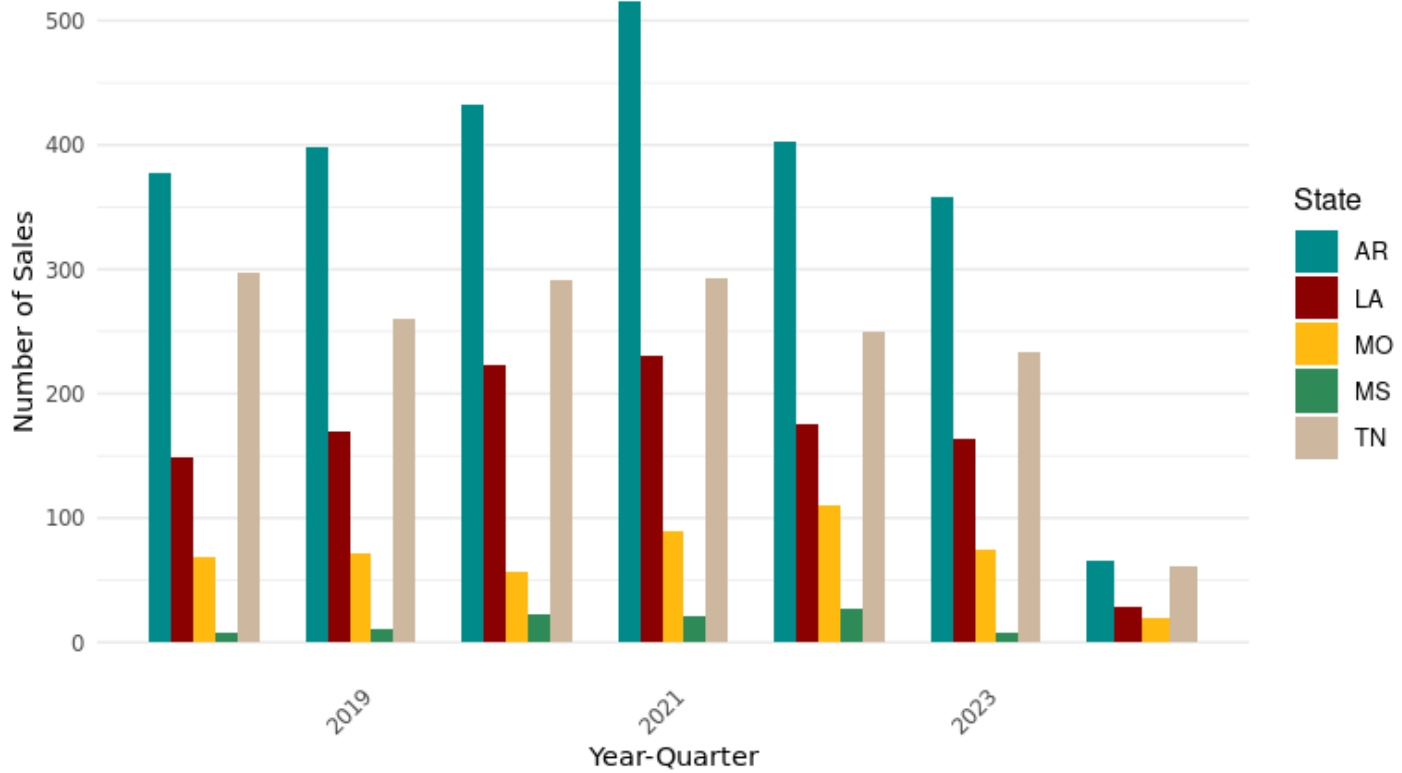
Price per Tillable Acre, Q2 2023-Q1 2024



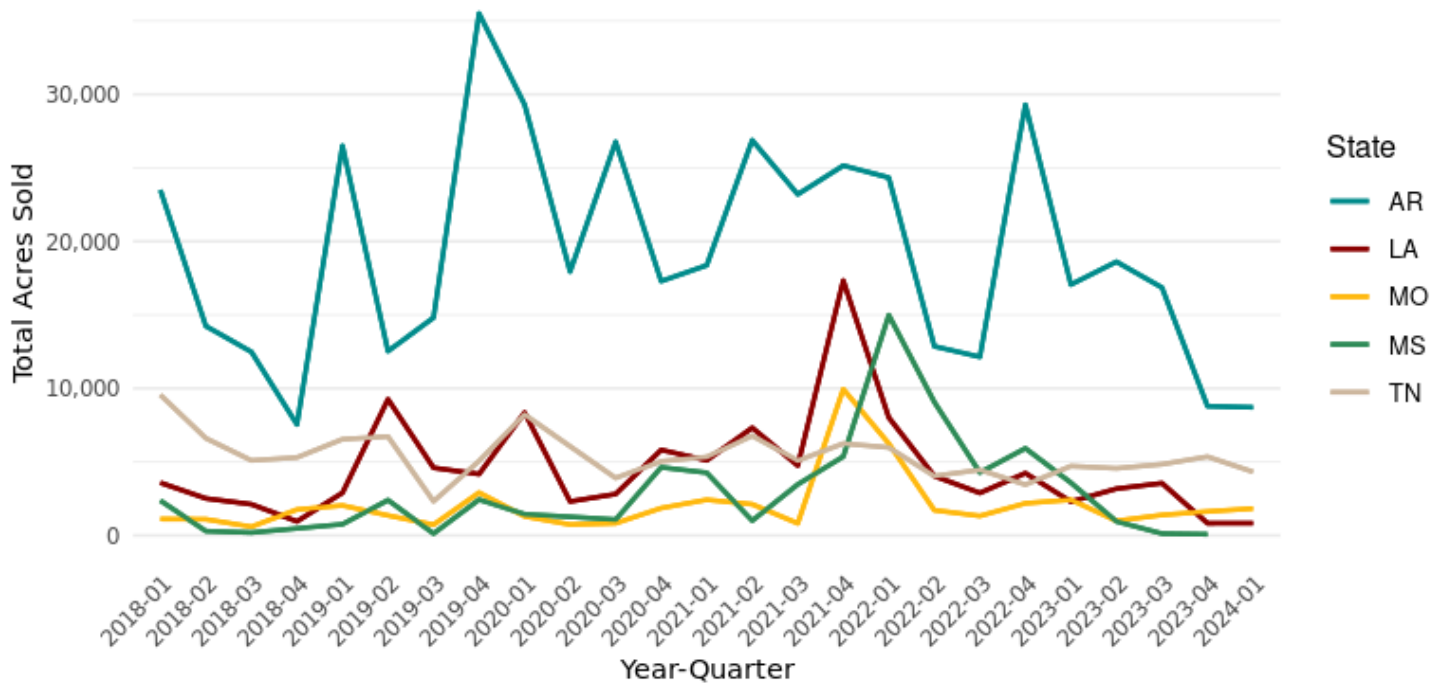
## Price Per Tillable Acre Trends from 2018 to 2024



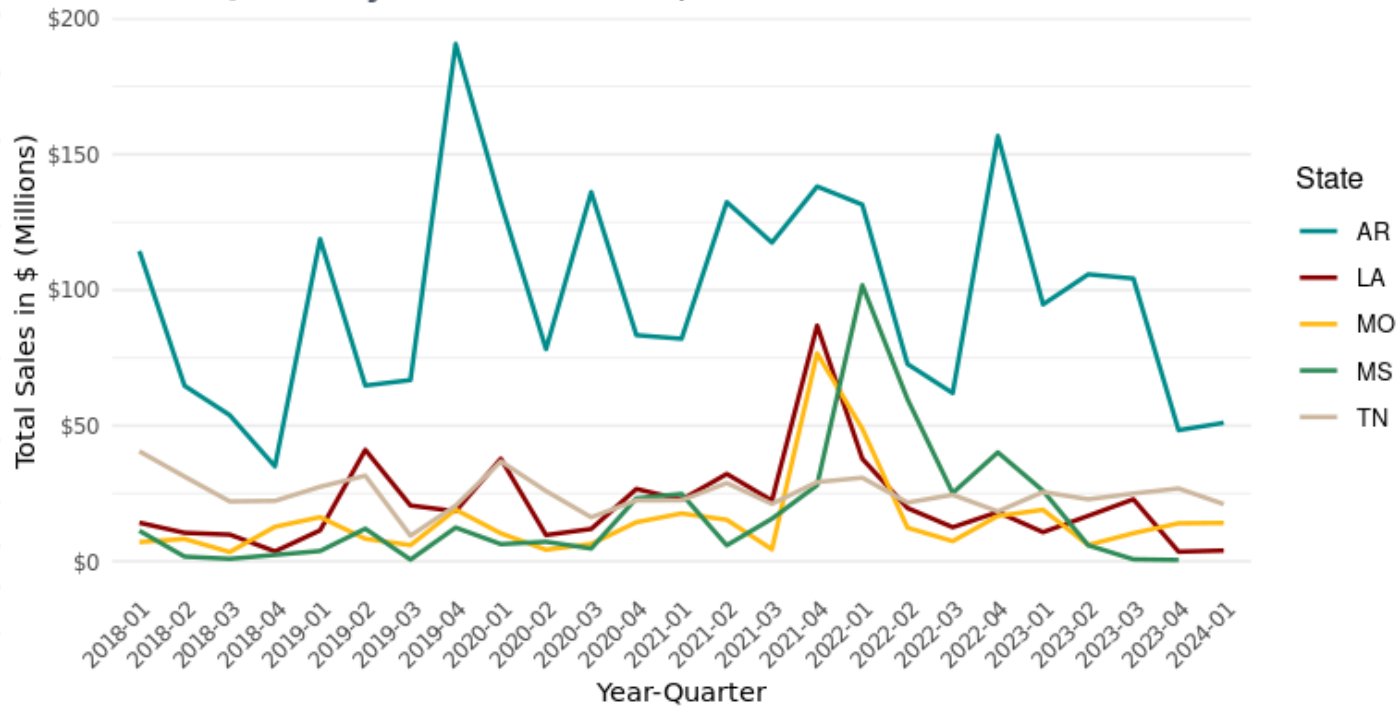
## Total Number of Land Sales from 2018 to 2024



## Total Quarterly Farmland Acres Sold, 2018 to 2023



## Total Quarterly Farmland Sales, 2018 to 2024





# Conclusions

→ Institutional Ownership Remains Low

→ Farmers Are the Biggest Buyers of Land

→ Mid-South Farms Becoming Fewer, Larger

→ Foreign Ownership – Myths and Realities

→ Mid-South Transactions Peaked in 2021-2022

→ Mid-South Land Values Grow Slowly, Consistently

